[redacted]

Supreme Court of the United States

..... Term, ...

No. .....

PAMPANGA SUGAR MILLS,
Petitioner,

VERSUS

WENCESLAO TRINIDAD,
as Collector of Internal Revenue
of the Philippine Islands,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

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United States of America
Philippine Islands

G. R. No. 23985

PAMPANGA SUGAR MILLS,
Plaintiff-Appellant,

VERSUS

WENCESLAO TRINIDAD, Collector of Internal Revenue for the Philippine Islands,
Defendant-Appellee.

(ON APPEAL FROM THE COURT OF FIRST INSTANCE OF MANILA)

Be it remembered that, on the dates respectively mentioned, the following proceedings were had in the above-entitled case:

On September 14, 1922, there was filed in Branch III of the Court of First Instance of Manila, Ninth Judicial District, the following complaint:

(HEADING AND TITLE)

COMPLAINT.

A

Comes now the plaintiff and for cause of action against the defendant alleges:

I

That plaintiff now is, and at all times hereinafter mentioned has been, a corporation organized and existing under the laws of the Philippine Islands, maintaining an office therein in the City of Manila. That the defendant, Wenceslao Trinidad is now, and from the first day of July, 1920, has been the duly appointed and acting Collector of Internal Revenue for the Philippine Islands.

II

That plaintiff now is, and at all times hereinafter mentioned has been, the legal owner and operator of a sugar mill at Del Carmen, Pampanga, Philippine Islands, and as such owner and operator, engaged in the production of raw centrifugal sugar from sugar cane delivered to it by the growers thereof.

III

That plaintiff and the growers of sugar-cane delivered to plaintiff from July 1, 1920, up to and including June 30, 1922, were parties to certain so-called milling contracts whereby the plaintiff received compensation

in sugar in return for which it ground and milled the sugar-cane so delivered.

IV.

That during the third quarter of the year 1920, from July 1, 1920, to and including September 30, 1920, plaintiff sold raw centrifugal sugar which had been received by it as compensation under the terms of the so-called milling contracts referred to in paragraph numbered III of this complaint, the value of which was Two Million and Fifty-nine Thousand Eight Hundred Ninety-seven and 00/100 (2,059,897.00) Pesos, Philippine currency.

V.

That the defendant, Wenceslao Trinidad, in his capacity as Collector of Internal Revenue, and under the pretended authority of Section 1459 of Act 2711, known as the Administrative Code of 1917, erroneously and unlawfully and against the will of the plaintiff, demanded of plaintiff and by virtue thereof did levy and assess against the plaintiff by way of a percentage tax and by reason of the erroneous application of said Section 1459, a tax of one per centum (1%) on the aforesaid

selling price of said sugar, to-wit: the sum of Twenty Thousand Five Hundred Ninety-eight and 97/100 (20,598.97) Pesos, Philippine Currency.

VI

That plaintiff involuntarily and under protest, to avoid the exaction of penalties for non-payment, did on the 18th day of October, 1920, pay to the defendant, Wenceslao Trinidad, the sum of Twenty Thousand Five Hundred Ninety-eight and 97/100 (₱20,598.97) Pesos, Philippine currency, demanded by him and at the same time notified the defendant that if the said sum were not returned an action at law would be brought for its recovery.

VII

That plaintiff has demanded of the defendant the return of the said sum of Twenty Thousand Five Hundred Ninety-eight and 97/100 (₱20,598.97) Pesos, Philippine currency, but defendant has refused and does refuse to return the aforementioned sum, or any part thereof, and the whole amount is now due and owing.

B

FOR A SECOND CAUSE OF ACTION AGAINST THE DEFENDANT, PLAINTIFF:

VIII.

Realleges and adopts each and all of the facts and allegations contained in paragraphs numbered I, II and III of this complaint, and further alleges:

IX.

That during the fourth quarter of the year 1920, from October 1, 1920, to and including December 31, 1920, plaintiff sold raw centrifugal sugar which had been received by it as compensation under the terms of the so-called milling contracts referred to in paragraph numbered III of this complaint, the value of which was Ninety-one Thousand Six Hundred Eight and 00/100 (₱91,608.00) Pesos, Philippine currency.

X.

That the defendant, Wenceslao Trinidad, in his capacity as Collector of Internal Revenue, and under the pretended authority of

Section 1459 of Act 2711, known as the Administrative Code of 1917, erroneously and unlawfully and against the will of the plaintiff, demanded of plaintiff and by virtue thereof did levy and assess against the plaintiff by way of a percentage tax and by reason of the erroneous application of said Section 1459, a tax of one per centum (1%) on the aforesaid selling price of said sugar, to wit: the sum of Nine Hundred Sixteen and 08/100 (₱916.08) Pesos, Philippine Currency.

XI

That plaintiff involuntarily and under protest, to avoid the exaction of penalties for non-payment, did on the 20th day of January, 1921, pay to the defendant, Wenceslao Trinidad, the sum of Nine Hundred Sixteen and 08/100 (₱916.08) Pesos, Philippine currency, demanded by him and at the same time notified the defendant that if the said sum were not returned an action at law would be brought for its recovery.

XII.

That plaintiff has demanded of the defendant the return of the said sum of Nine

Hundred Sixteen and 08/100 (₱916.08) Pesos, Philippine currency, but defendant has refused and does refuse to return the aforementioned sum, or any part thereof, unto the plaintiff and the whole amount is now due and owing.

C

FOR A THIRD CAUSE OF ACTION AGAINST THE DEFENDANT, PLAINTIFF:

XIII.

Realleges and adopts each and all of the facts and allegations contained in paragraphs numbered I, II and III of the complaint, and further alleges:

XIV.

That during the first quarter of the year 1921, from January 1, 1921, to and including March 31, 1921, plaintiff sold raw centrifugal sugar which had been received by it as compensation under the terms of the so-called milling contracts referred to in paragraph numbered III of this complaint, the value of which was Five Hundred Forty Thousand and Sixty-six and 00/100 (₱540,066.00) Pesos, Philippine currency.

XV

That the defendant, Wenceslao Trinidad, in his capacity as Collector of Internal Revenue, and under the pretended authority of Section 1459 of Act 2711, known as the Administrative Code of 1917, erroneously and unlawfully and against the will of the plaintiff, demanded of plaintiff and by virtue thereof did levy and assess against the plaintiff by way of a percentage tax and by reason of the erroneous application of said Section 1459, a tax of one per centum (1%) on the aforesaid selling price of said sugar, to-wit: the sum of Five Thousand Four Hundred and 66/100 (₱5,400.66) Pesos, Philippine currency.

XVI.

That plaintiff involuntarily and under protest, to avoid the exaction of penalties for non-payment, did on the 20th of April 1921, pay to the defendant, Wenceslao Trinidad, the sum of Five Thousand Four Hundred and 66/100 (₱5,400.66) Pesos, Philippine currency, demanded by him and at the same time notified the defendant that if the said sum were not returned an action at law would be brought for its recovery.

XVII.

That plaintiff has demanded of the defendant the return of the said sum of Five Thousand Four Hundred and 66/100 (₱5,400.66) Pesos, Philippine currency, but defendant has refused and does refuse to return the aforementioned sum, or any part thereof, and the whole amount is now due and owing.

D

FOR A FOURTH CAUSE OF ACTION AGAINST THE DEFENDANT, PLAINTIFF:

XVIII.

Realleges and adopts each and all of the facts and allegations contained in paragraphs numbered I, II and III of this complaint, and further alleges:

XIX.

That during the second quarter of the year 1921, from April 1, 1921, to and including June 30, 1921, plaintiff sold raw centrifugal sugar which had been received by it as compensation under the terms of the so-called milling contracts referred to in paragraph

numbered III of this complaint, the value of which was One Million Three Hundred Eighty-eight Thousand Eleven and 00/100 (₱1,388,011.00) Pesos, Philippine Currency.

XX.

That the defendant, Wenceslao Trinidad, in his capacity as Collector of Internal Revenue, and under the pretended authority of Section 1459 of Act 2711, known as the Administrative Code of 1917, erroneously and unlawfully and against the will of the plaintiff, demanded of plantiff and by virtue thereof did levy and assess against the plaintiff by way of a percentage tax and by reason of the erroneous application of said Section 1459, a tax of one per centum (1%) on the aforesaid selling price of said sugar, to-wit: the sum of Thirteen Thousand Eight Hundred Eighty and 11/100 (₱ 13,880.11) Pesos, Philippine Currency.

XXI.

That the plaintiff involuntarily and under protest, to avoid the exaction of penalties for non-payment, did on the 20th day of July, 1921, pay to the defendant, Wenceslao Trinidad, the sum of Thirteen Thousand Eight

Hundred Eighty and 11/100 (₱13,880.11) Pesos, Philippine currency, demanded by him and at the same time notified the defendant that if the said sum were not returned an action at law would be brought for its recovery.

XXII.

That plaintiff has demanded of the defendant the return of the said sum of Thirteen Thousand Eight Hundred Eighty and 11/100 (₱13,880.11) Pesos, Philippine currency, but defendant has refused and does refuse to return the aforementioned sum, or any part thereof, unto the plaintiff and the whole amount is now due and owing:

E

FOR A FIFTH CAUSE OF ACTION AGAINST THE DEFENDANT, PLAINTIFF:

XXIII.

Realleges and adopts each and all of the facts and allegations contained in paragraphs numbered I, II and III of this complaint, and further alleges:

XXIV.

That during the third quarter of the year 1921, from July 1, 1921, to and including September 30, 1921, plaintiff sold raw centrifugal sugar which had been received by it as compensation under the terms of the so-called milling contracts referred to in paragraph numbered III of this complaint, the value of which was Four Hundred Fifty Thousand Six Hundred Ninety-eight and 00/100 (₱450,698.00) Pesos, Philippine currency.

XXV.

That the defendant, Wenceslao Trinidad, in his capacity as Collector of Internal Revenue, and under the pretended authority of Section 1459 of Act 2711, known as the Administrative Code of 1917, erroneously and unlawfully and against the will of the plaintiff, demanded of plaintiff and by virtue thereof did levy and assess against the plaintiff by way of a percentage tax and by reason of the erroneous application of said Section 1459, a tax of one per centum (1%) on the aforesaid selling price of said sugar, to-wit: the sum of Four Thousand Five Hun-

dred Six and 98/100 (₱4,506.98) Pesos, Philippine currency.

XXVI.

That plaintiff involuntarily and under protest, to avoid the exaction of penalties for non-payment, did on the 20th day of October, 1921, pay to the defendant, Wenceslao Trinidad, the sum of Four Thousand Five Hundred Six and 98/100 (₱4,506.98) Pesos, Philippine currency, demanded by him and at the same time notified the defendant that if the said sum were not returned an action at law would be brought for its recovery.

XXVII.

That the plaintiff has demanded of the defendant the return of the said sum of Four Thousand Five Hundred Six and 98/100 (₱4,506.98) Pesos, Philippine currency, but defendant has refused and does refuse to return the aforementioned sum, or any part thereof, unto the plaintiff, and the whole amount is now due and owing.

F

FOR A SIXTH CAUSE OF ACTION AGAINST THE DEFENDANT, PLAINTIFF:

XXVIII.

Realleges and adopts each and all of the facts and allegations contained in paragraphs numbered I, II and III of this complaint, and further alleges:

XXIX.

That during the fourth quarter of the year 1921, from October 1, 1921, to and including December 31, 1921, the plaintiff received as compensation under the terms of the so-called milling contracts referred to in paragraph numbered III of this complaint, raw centrifugal sugar valued at One Hundred Twelve Thousand Seven Hundred Sixty-one and 00/100 (₱112,761.00) Pesos, Philippine currency.

XXX

That the defendant, Wenceslao Trinidad, in his capacity as Collector of Internal Revenue for the Philippine Islands, and under the pretended authority of Section 1462

of Act 2711 of the Philippine Legislature, treated the value of the plaintiff's share of the raw centrifugal sugar produced, as aforesaid, as gross receipts, and demanded of plaintiff and did levy and assess against plaintiff a tax of one per centum (1%) on the aforesaid value of said sugar, to-wit: the sum of One Thousand One Hundred Twenty-seven and 61/100 (₱1,127.61) Pesos, Philippine currency.

XXXI

That plaintiff involuntarily and under protest, to avoid the exaction of penalties for non-payment, did on the 20th day of January, 1922, pay to the defendant, Wenceslao Trinidad, as Collector of Internal Revenue, the sum of One Thousand One Hundred Twenty-seven and 61/100 (₱1,127.61) Pesos, Philippine currency, demanded by him and at the same time notified the defendant that if the said sum were not returned an action at law would be brought for its recovery.

XXXII.

That plaintiff has demanded of the defendant the return of said sum of One Thousand One Hundred Twenty-seven and 61/100

(₱1,127.61) Pesos, Philippine currency, but defendant has refused and does refuse to return the aforementioned sum, or any part thereof, unto the plaintiff and the whole amount is now due and owing.

G

FOR A SEVENTH CAUSE OF ACTION AGAINST THE DEFENDANT, PLAINTIFF:

XXXIII.

Realleges and adopts each and all of the facts and allegations contained in paragraphs numbered I, II and III of this complaint, and further alleges:

XXXIV.

That during the first quarter of the year 1922, from January 1, 1922, to and including March 31, 1922, the plaintiff received as compensation under the terms of the so-called milling contracts referred to in paragraph numbered III of this complaint, raw centrifugal sugar valued at Six Hundred Sixteen Thousand Five Hundred Seven and 00/100 (₱616,507.00) Pesos, Philippine currency.

XXXV.

That the defendant, Wenceslao Trinidad, in his capacity as Collector of Internal Revenue for the Philippine Islands, and under the pretended authority of Section 1462 of Act 2711 of the Philippine Legislature, treated the value of plaintiff's share of the raw centrifugal sugar produced, as aforesaid, as gross receipts, and demanded of plaintiff and did levy and assess against plaintiff a tax of one per centum (1%) on the aforesaid value of said sugar, to-wit: the sum of Six Thousand One Hundred Sixty-five and 07/100 (₱6,165.07) Pesos, Philippine currency.

XXXVI.

That plaintiff involuntarily and under protest, to avoid the exaction of penalties for non-payment, did on the 19th day of April, 1922, pay to the defendant, Wenceslao Trinidad, as Collector of Internal Revenue, the sum of Six Thousand One Hundred Sixty-five and 07/100 (₱6,165.07) Pesos, Philippine currency, demanded by him and at the same time notified the defendant that if the said sum were not returned an action at law would be brought for its recovery.

XXXVII.

That plaintiff has demanded of the defendant the return of said sum of Six Thousand One Hundred Sixty- five and 07/100 (P 6,165.07) Pesos, Philippine currency, but defendant has refused and does refuse to return the aforementioned sum, or any part thereof, unto the plaintiff and the whole amount is now due and owing.

H

FOR AN EIGHTH CAUSE OF ACTION AGAINST THE DEFENDANT, PLAINTIFF:

XXXVIII.

Realleges and adopts each and all of the facts and allegations contained in paragraphs numbered I, II and III of this complaint, and further alleges:

XXXIX.

That during the second quarter of the year 1922, from April 1922, to and including June 30, 1922, the plaintiff received as compensation under the terms of the so-called milling contracts referred to in paragraph

numbered III of this complaint, raw centrifugal sugar valued at Eight Hundred Thirty-one Thousand Five Hundred Ninety-four and 00/100 (₱ 831,594.00) Pesos, Philippine currency.

XL.

That the defendant, Wenceslao Trinidad, in his capacity as Collector of Internal Revenue for the Philippine Islands, and under the pretended authority of Section 1462 of Act 2711 of the Philippine Legislature, treated the value of plaintiff's share of the raw centrifugal sugar produced, as aforesaid, as gross receipts, and demanded of plaintiff and did levy and assess against plaintiff a tax of one per centum (1%) on the aforesaid value of said sugar, to wit: the sum of Eight Thousand Three Hundred Fifteen and 94/100 (₱ 8,315.94) Pesos Philippine currency.

XLI.

That plaintiff involuntarily and under protest, to avoid the exaction of penalties for non-payment, did on the 13th day of July, 1922, pay to the defendant, Wenceslao Trinidad, as Collector of Internal Revenue, the sum of Eight Thousand Three Hundred Fif-

teen and 94/100 (₱ 8,315.94) Pesos, Philippine currency, demanded by him and at the same time notified the defendant that if the said sum were not returned an action at law would be brought for its recovery.

XLII.

That plaintiff has demanded of the defendant the return of said sum of Eight Thousand Three Hundred Fifteen and 94/100 (₱ 8,315.94) Pesos, Philippine currency, but defendant has refused and does refuse to return the aforementioned sum, or any part thereof, unto the plaintiff and the whole amount is now due and owing.

WHEREFORE, the plaintiff prays that judgment be rendered against the defendant for the sum of Sixty Thousand Nine Hundred Eleven and 42/100 (₱60,911.42) Pesos Philippine currency, with legal interest on:

Twenty Thousand Five Hundred Ninety-eight and 97/100 (₱ 20,598.97) Pesos, from October 18, 1920;

Nine Hundred Sixteen and 08/100 (₱916.08) Pesos from January 20, 1921;

Five Thousand Four Hundred and

66/100 (₱5,400.66) Pesos, from April 20, 1921;

Thirteen Thousand Eight Hundred Eighty and 11/1000 (₱13,880.11) Pesos, from July 20, 1921;

Four Thousand Five Hundred Six and 98/100 (₱4,506.98) Pesos, from October 20, 1921;

One Thousand One Hundred Twenty-seven and 61/100 (₱ 1,127.61) Pesos from January 20, 1922;

Six Thousand One Hundred Sixty-five and 07/100 (₱6,165.07) Pesos from April 19, 1922; and

Eight Thousand Three Hundred Fifteen and 94/100 (₱8,315.94) Pesos, from July 13, 1922,

until paid, together with the costs of this action, and for such other and further relief as to this Court may appear right and proper.

Manila, P. I., September 14, 1922.

(Sgd.) JOSE YULO
Attorney for Plaintiff,
508 Chaco Building,
Manila, P. I.

On October 10, 1922, the defendant, by and thru the Attorney General of the Philippine Islands, filed the following answer:

(HEADING AND TITLE)

ANSWER.

Comes now the defendant and in answer to the plaintiff's complaint avers:

That he admits all the allegations contained in each and every paragraph of the complaint.

As special defense, the defendant alleges:

1. That plaintiff is not the owner of the land where the cane ground by it was grown.

2. That the plaintiff in grinding, milling and converting into sugar the cane delivered to it by the planters and selling its share of sugar produced acted as a manufacturer, and consequently, the proceeds of the sale of said sugar was subject to tax under the provisions of Section 1459 of the Administrative Code; and

3. That the tax collected from the plaintiff was legally due from it as manufacturer under the provisions of the above-mentioned section of the Administrative Code.

WHEREFORE, the defendant prays

that he be absolved from the complaint with costs against the plaintiff.

Manila October 10,1922.

(Sgd.) ANT. VILLA-REAL
Attorney-General.

On October 20, 1922, the plaintiff, by its attorney, filed the following reply to defendant's answer:

(HEADING AND TITLE)

REPLY TO DEFENDANT'S ANSWER

Now comes the plaintiff in the above entitled cause by its undersigned attorney and in reply to defendant's answer and special defense, alleges:

That it denies each and every allegation contained in each and every paragraph of the special defense contained in defendant's answer.

WHEREFORE, plaintiff prays that defendant's special defense be discarded.

Manila, P. I. October 20, 1922.

JOSE YULO
(Sgd.) BY SIMON R. CRUZ
Attorney for Plaintiff,
325 *Pacific Building, Manila.*

Under date of September 15, 1924, the plaintiff and the defendant by their respective attorneys, filed the following stipulation covering agreed statements of facts:

(HEADING AND TITLE)

STIPULATION COVERING AGREED STATEMENTS OF FACTS

Now comes the plaintiff, Pampanga Sugar Mills, and the defendant, Wenceslao Trinidad, Collector of Internal Revenue of the Philippine Islands, thru their respective undersigned attorneys, and hereby submit to this Honorable Court the following agreed statement of facts covering the issues involved in the present proceeding, to-wit:

I.

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands and having its principal office therein in the City of Manila, and that the defendant was, at all times hereinafter mentioned and at the time of the inception of these proceedings, the duly appointed, qualified, and acting Collector of Internal Revenue of the Philippine Islands.

II.

The plaintiff is and at all times hereinafter mentioned, has been the legal owner and operator of a sugar mill at Del Carmen, Pampanga, P. I., and as such owner and operator engaged in the production of raw centrifugal sugar and its by-products.

III.

That in the operation of its sugar mill above-mentioned for the production of raw centrifugal sugar, plaintiff mills sugar cane grown by sugar cane growers on lands other than those belonging to plaintiff, and delivered to it under so-called milling contracts, and as compensation for its services in milling said sugar cane, plaintiff receives 50% of the resulting centrifugal sugar and the sugar cane growers receive the remaining 50% of the resulting centrifugal sugar.

IV.

That during the times hereinafter set forth, plaintiff received as its share in the milling of sugar cane belonging to sugar cane growers, raw centrifugal sugar the sales

values of which upon being sold by plaintiff were as follows:

(a) During the third quarter of the year 1920, that is, from July 1, 1920, to and including September 30, 1920	₱2,059,897.00
(b) During the fourth quarter of the year 1920, that is, from October 1, 1920 to and including December 31, 1920	91,608.00
(c) During the first quarter of the year 1921, that is, from January 1, 1921, to and including March 31, 1921	540,066.00
(d) During the second quarter of the year 1921, that is, from April 1, 1921 to and including June 30, 1921 ..	1,388,011.00
(e) During the third quarter of the year 1921, that is, from July 1, 1921 to and including September 30, 1921	450,698.00
(f) During the fourth quarter	

of the year 1921, that is, from October 1, 1921, to and including December 31, 1921	112,761.00
(g) During the first quarter of the year 1922, that is, from January 1, 1922, to and including March 31, 1922	616,507.00
(h) During the second quarter of the year 1922, that is, from April 1, 1922, to and including June 30, 1922 ..	831,594.00

V.

That the defendant, claiming to act under the authority of Section 1459 of Act 2711 known as the Administrative Code of 1917, levied and assessed against the plaintiff a percentage tax of one per centum (1%) on the aforesaid sales values of said raw sugar as follows:

(a) 1% of	₱2,059,897.00	₱20,598.97
(b) 1% of	91,608.00	916.08
(c) 1% of	540,066.00	5,400.66
(d) 1% of	1,388,011.00	13,880.11
(e) 1% of	450,698.00	4,506.98

(f) 1% of	112,761.00	1,127.61
(g) 1% of	616,507.00	6,165.07
(h) 1% of	831,594.00	8,315.94

and plaintiff in order to avoid the exaction of penalties for non-payment of the tax, involuntarily and under protest did pay to the defendant in due time all the amounts above specified, making in all the total sum of P60,911.42, Philippine currency.

VI.

That plaintiff duly filed its protests against the payment of all of the aforesaid taxes on the grounds that said taxes were illegal and that plaintiff was exempted therefrom by the terms of Section 1460 of Act 2711 commonly known as the Administrative Code of 1917.

VII.

That the defendant overruled and denied the aforesaid protests of plaintiff and refused, on demand, and still persists in refusing to return to plaintiff the total amount of said taxes, or any part thereof.

VIII.

That thereupon, on the 14th day of September, 1922, plaintiff filed its complaint

herein, that on the 11th day of October, 1922, the defendant filed his answer to said complaint, admitting all the allegations contained in said complaint, but setting up as special defense the fact that plaintiff is not the owner of the land where the cane ground by it was grown, and that plaintiff in grinding said cane was a manufacturer and as such was subject to tax under section 1459 of Act No. 2711, known as the Administrative Code of 1917; whereupon this cause being at issue, the parties have stipulated and agreed to submit this cause for decision upon the within stipulation on an agreed statement of facts.

Manila, P. I., September 15, 1924.

(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for the Plaintiff,
420 Pacific Bldg., Manila.

(Sgd.) ATTORNEY-GENERAL,
Attorney for the Defendant,
Manila.

Under date of November 7, 1924, the plaintiff and the defendant by their respective attorneys, filed the following stipulation:

(HEADING AND TITLE)

STIPULATION.

Now come the parties to the above entitled cause by their undersigned attorneys, and, with leave of this Court first had and obtained, hereby stipulate and agree that the issues presented in this case being similar to those involved in the case now pending decision before the Supreme Court of the Philippine Islands, entitled CENTRAL AZUCARERA DE BAIS v. WENCESLAO TRINIDAD, R. G. No. 21490, and the said case having been submitted already for decision, decision of this case be held in abeyance until after the decision of the Supreme Court in the above-mentioned case has been promulgated.

Manila, November 7, 1924.

(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for the Plaintiff,
420 Pacific Bldg., Manila.

(Sgd.) ATTORNEY-GENERAL,
Attorney for the Defendant,
Manila.

Under date of November 24, 1924, the plaintiff by its undersigned attorneys, filed the following memorandum for plaintiff:

(HEADING AND TITLE)

MEMORANDUM FOR PLAINTIFF

Comes now the plaintiff in the above-entitled cause and respectfully represents to this Court that the decision of the Supreme Court in the case entitled "Central Azucarera de Bais—vs.—Wenceslao Trinidad", R. G. No. 21490, has not yet become final and that a motion for reconsideration is now in process of preparation to be submitted to the Supreme Court.

WHEREFORE, plaintiff prays that decision of this case be held in abeyance until the decision in said case has duly become final.

Manila, Philippine Islands, November 24, 1924.

PAREDES, BUENCAMINO & YULO
Attorneys for the Plaintiff,
420 Pacific Bldg., Manila.

Under date of January 5, 1925, the lower Court rendered its decision as follows:

(HEADING AND TITLE)

D E C I S I O N

This is an action in which plaintiff, by eight causes of action, seeks to recover back from the defendant various sums of money, aggregating P60,911.42 paid by plaintiff under protest as percentage taxes as a manufacturer under Section 1459 of Act No. 2711, known as the Administrative Code.

The answer admits all the allegations of the complaint, and as a special defense defendant alleges that plaintiff is not the owner of the land where the cane ground by it was grown; that plaintiff in grinding, milling and converting into sugar the cane delivered to it by the planters and selling its share of sugar produced, acted as manufacturer, and, consequently, the proceeds of the sale of said sugar was subject to tax under the provisions of section 1459 of the Administrative Code, and that the tax collected from plaintiff was legally due from it as manufacturer under the provisions of said section of the Administrative Code.

On October 6, 1924, the parties filed the following:

STIPULATION COVERING AGREED STATEMENT OF FACTS.

Now come the plaintiff, Pampanga Sugar Mills, and the defendant, Wenceslao Trinidad, Collector of Internal Revenue of the Philippine Islands, thru their respective undersigned attorneys, and hereby submit to this Honorable Court the following agreed statement of facts covering the issues involved in the present proceeding, to-wit:

I.

"That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, and having its principal office therein in the City of Manila, and that the defendant was, at all times hereinafter mentioned and at the time of the inception of these proceedings, the duly appointed, qualified, and acting Collector of Internal Revenue of the Philippine Islands.

II.

"That plaintiff is, and at all times hereinafter mentioned has been, the legal owner and operator of a sugar mill at Del Carmen, Pampanga, P. I., and as such owner and operator engaged in the production of raw centrifugal sugar and its by-products.

III.

"That in the operation of its sugar mill above-mentioned for the production of raw centrifugal sugar, plaintiff mills sugar cane grown by sugar cane growers on lands other than those belonging to plaintiff and delivered to it under so-called milling contracts, and as compensation for its services in milling said sugar cane, plaintiff receives 50% of the resulting centrifugal sugar and the sugar cane growers receive the remaining 50% of the resulting centrifugal sugar.

IV.

"That during the times hereinafter set forth, plaintiff received as its

share in the milling of sugar cane belonging to sugar cane growers, raw centrifugal sugar the sales values of which upon being sold by plaintiff were as follows:

(a) During the third quarter of the year 1920, that is, from July 1, 1920, to and including September 30, 1920	₱2,059,897.00
(b) During the fourth quarter of the year 1920, that is, from October 1, 1920 to and including December 31, 1920,	91,608.00
(c) During the first quarter of the year 1921, that is, from January 1, 1921 to and including March 31, 1921	540,066.00
(d) During the second quarter of the year 1921, that is, from April 1, 1921, to and including June 30, 1921	1,388,011.00
(e) During the third quarter of the year 1921, that is, from July 1, 1921 to and including September 30, 1921	450,698.00

(f) During the fourth quarter of the year 1921, that is, from October 1, 1921, to and including December 31, 1921	112,761.00
(g) During the first quarter of the year 1922, that is, from January 1, 1922, to and including March 31, 1922	616,507.00
(h) During the second quarter of the year 1922, that is, from April 1, 1922, to and including June 30, 1922 ..	831,594.00

V

"That the defendant, claiming to act under the authority of Section 1459 of Act 2711 known as the Administrative Code of 1917, levied and assessed against the plaintiff a percentage tax of one per centum (1%) on the aforesaid sales value of said raw sugar as follows:

(a) 1% of	₱2,059,897.00	₱20,598.97
(b) 1% of	91,608.00	916.08
(c) 1% of	540,066.00	5,400.66
(d) 1% of	1,388,011.00	13,880.11

(e) 1% of	450,698.00	4,506.98
(f) 1% of	112,761.00	1,127.61
(g) 1% of	616,507.00	6,165.07
(h) 1% of	831,594.00	8,315.94

and plaintiff in order to avoid the exaction of penalties for non-payment of the tax, involuntarily and under protest did pay to the defendant in due time all the amounts above specified, making in all the total sum of ₱60,911.42, Philippine currency.

VI.

"That plaintiff duly filed its protests against the payment of all of the aforesaid taxes on the grounds that said taxes were illegal and that plaintiff was exempted therefrom by the terms of Section 1460 of Act 2711 commonly known as the Administrative Code of 1917.

VII.

"That the defendant overruled and denied the aforesaid protest of plaintiff and refused, on demand, and still persists in refusing to return to plain-

tiff the total amount of said taxes, or any part thereof.

VIII.

"That thereupon, on the 14th day of September, 1922, plaintiff filed its complaint herein; that on the 11th day of October, 1922, the defendant filed his answer to said complaint, admitting all the allegations contained in said complaint, but setting up as special defense the fact that plaintiff is not the owner of the land where the cane ground by it was grown, and that plaintiff in grinding said cane was a manufacturer and as such was subject to tax under section 1459 of Act No. 2711, known as the Administrative Code of 1917; whereupon this cause being at issue, the parties have stipulated and agreed to submit this cause for decision upon the within stipulation on an agreed statement of facts.

Manila, P. I., September 15, 1924.

(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for the Plaintiff,
420 Pacific Bldg., Manila.

(Sgd.) ANTONIO VILLA-REAL,
Attorney-General,
Attorney for the Defendant."

On November 8, 1924, the parties also filed the following:

"*STIPULATION*

"Now come the parties to the above entitled cause by their undersigned attorneys and, with leave of this Court first had and obtained, hereby stipulate and agree that the issues presented in this case being similar to those involved in the case now pending decision before the Supreme Court of the Philippine Islands, entitled CENTRAL AZUCARERA DE BAIS v. WENCESLAO TRINIDAD, R. G. Number 21490, and the said case having been submitted already for decision, decision

of this case be held in abeyance until after the decision of the Supreme Court in the above-mentioned case has been promulgated.

Manila, November 7, 1924.

(Sgd.) PAREDES, BUENCAMINO & YULO
Attorneys for the Plaintiff,
420 Pacific Bldg., Manila,

(Sgd.) ANTONIO VILLA-REAL,
Attorney-General,
Attorney for the Defendant,
Manila."

A copy of the decision of the Supreme Court in the case referred to in said stipulation has been filed in this case, and from it the following extracts are copied:

> "This is an action to recover back merchants' percentage taxes collected from the plaintiff on consignment abroad under section 1459 of Act No. 2711, the Administrative Code of 1917, the defendant contending that the plaintiff is a 'manufacturer' within the meaning of that section."

After stating the facts the Supreme Court said:

> "The court below held that the plaintiff was not a manufacturer within the letter and the spirit of said section 1459 and rendered judgment in favor of said plaintiff for recovery back of the sum of ₱24,859.99, without interest and costs. From this judgment the defendant appealed to this court.
>
> "The decision of the case turns upon the determination of two questions: (1) Whether the plaintiff is a manufacturer in the sense of constituting it a merchant within the meaning of section 1459 of the Administrative Code, and (2) whether the plaintiff is entitled to the exemption provided for in subsection (b) of section 1460 of the same Code".

The Supreme Court stated its conclusion as follows:

> "From what has been said it follows that the percentage tax on the consignment in question was legally collected and that the judgment of the court below must be reversed.

In accordance with said decision of the Supreme Court upon the same question it is hereby ordered that judgment be entered in this case dismissing plaintiff's complaint and absolving defendant from the demands of plaintiff, with the costs against plaintiff.

IT IS SO ORDERED.

Manila, P. I., January 5, 1925.

(Sgd.) GEO. R. HARVEY,
Judge.

Under date of February 4, 1925, plaintiff filed the following exception and motion for a new trial:

(HEADING AND TITLE)

EXCEPTION AND MOTION FOR A NEW TRIAL.

Now comes the plaintiff by its undersigned attorneys and excepts to the decision rendered in the above-entitled case on the 5th of January, 1925, dismissing the complaint with costs against the plaintiff, and respectfully moves this Court to set aside the said judgment and grant a new trial of said action for the following reasons:

1. That the evidence presented does not justify the decision;

2. That the decision is contrary to law.

Manila, Philippine Islands, February 4, 1925.

(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for the Plaintiff,
420 Pacific Bldg., Manila.

Plaintiff's motion for new trial having been denied on February 7, 1925, and its counsel having been notified of such denial on February 10, 1925, the following exception and notice of appeal was filed:

(HEADING AND TITLE)

EXCEPTION AND NOTICE OF APPEAL

Comes now the plaintiff by its undersigned attorneys, and to this Honorable Court respectfully states:

1. That on February 10, 1925, plaintiff received notice of the order of this Honorable Court under date of February 9, 1925, denying plaintiff's motion for a new trial, and hereby excepts thereto.

2. That plaintiff appeals from the decision to the Supreme Court and announces its intention to file the requisite bill of exceptions.

Manila, Philippine Islands, February 14, 1925.

(Sgd.) PAREDES, BUENCAMINO & YULO,
Attorneys for the Plaintiff,
420 Pacific Bldg., Manila.

Thereafter, to wit, on March 25, 1925, the corresponding Bill of Exceptions, together with the documentary evidence, was received in the Office of the Clerk of the Supreme Court.

On March 30, 1925, the case was duly registered under No. 23985 of the General Register of the Supreme Court.

On June 22, 1925, counsel for plaintiff and appellant filed their brief, assigning the following errors:

ERROR No. 1

***The lower court erred** in holding that **plaintiff is a manufacturer** in the sense of constituting it a merchant within the meaning of section 1459 of the Administrative Code of 1917.*

ERROR No. 2

The lower court erred in holding that plaintiff is not entitled to the exemption provided for in section 1460, paragraph B of the same Code.

ERROR No. 3

The lower court erred in dismissing plaintiff's complaint with costs against it.

On August 4, 1925, counsel for the defendant and appellee filed his brief therein.

On October 15, 1925, the case was argued and submitted to the Supreme Court.

On December 18, 1925, the following order was issued:

> "The Court being unable to arrive at decision by the vote required by law in the case of Pampanga Sugar Mills vs. Wenceslao Trinidad, Collector of Internal Revenue for the Philippine Islands, R. G. No. 23985, it is the order of the Court that same be taken off of the calendar in which it now appears and assigned anew in the July, 1926 calendar for rehearing."

On July 12, 1926, the Court entered the following order:

> "Considering the motion of the attorneys for the plaintiff and appellant in case R. G. No. 23985, Pampanga Sugar Mills vs. Wenceslao Trinidad etc., praying, for the reasons given, that the rehearing of said case be postponed and that the case be decided by a full Court, MOTION GRANTED, and let said case be stricken from the July calendar and Clerk is instructed to report the matter again to the Court at its first opportunity."

On October 23, 1926, the Court instructed the Clerk to include the said case in the calendar to be called in November next.

On November 22, 1926, the case was reargued and submitted for the second time.

On October 5, 1927, the Court, not having come to a decision, issued the following order:

> "The Court ordered that case R. G. No. 23985, Pampanga Sugar Mills vs. Wenceslao Trinidad, Collector of Internal Revenue for the Philippine Islands, be set for oral argument on October 15, 1927, at 9:00 o'clock A. M."

On October 15, 1927, the case was finally submitted to the Supreme Court of the Philippine Islands for decision on the merits.

On February 2, 1928, the said Supreme Court rendered its decision in the case, which said decision is in words and figures following to wit:

D E C I S I O N

OSTRAND, *J.*:

Upon eight causes of action, the plaintiff corporation seeks to recover back from the defendant Collector of Internal Revenue the total sum of P60,911.42 paid by it as merchant's percentage taxes under Sec. 1459 of the Administrative Code of 1917.

The case was submitted to the Court of First Instance for decision on the following agreed statement of facts:

> "Now come the plaintiff, Pampanga Sugar Mills, and the defendant, Wenceslao Trinidad, Collector of Internal Revenue of the Philippine Islands, thru their respective undersigned attorneys, and hereby submit to this Honorable Court the following agreed statement of facts covering the issues involved in the present proceeding, to wit:
>
> "1.—That the plaintiff is a corporation

duly organized and existing under and by virtue of the laws of the Philippine Islands, and having its principal office therein in the City of Manila, and that the defendant was, at all times hereinafter mentioned and at the time of the inception of these proceedings, the duly appointed, qualified, and acting Collector of Internal Revenue of the Philippine Islands.

"2.—That plaintiff is and at all times hereinafter mentioned has been, the legal owner and operator of a sugar mill at Del Carmen, Pampanga, P. I., and as such owner and operator engaged in the production of raw centrifugal sugar and its by-products.

"3.—That in the operation of its sugar mill above-mentioned for the production of raw centrifugal sugar, plaintiff mills sugar cane grown by sugar cane growers on lands other than those belonging to plaintiff and delivered to it under so-called milling contracts, and as compensation for its services in milling said sugar cane, plaintiff receives 50% of the resulting centrifugal sugar, and the sugar cane growers receive the remaining 50% of the resulting centrifugal sugar.

"4.—That during the times hereinafter set forth, plaintiff received as its share in the

milling of sugar cane belonging to sugar cane growers, raw centrifugal sugar the sales values of which upon being sold by plaintiff were as follows:

(a) During the third quarter of the year 1920, that is, from July 1, 1920, to and including September 30, 1920	₱2,059,897.00
(b) During the fourth quarter of the year 1920, that is, from October 1, 1920, to and including December 31, 1920	91,608.00
(c) During the first quarter of the year 1921, that is, from January 1, 1921, to and including March 31, 1921 ..	540,066.00
(d) During the second quarter of the year 1921, that is, from April 1, 1921, to and including June 30, 1921 ..	1,388,011.00
(e) During the third quarter of the year 1921, that is, from July 1, 1921, to and including September 30, 1921	450,698.00

(f) During the fourth quarter of the year 1921, that is, from October 1, 1921, to and including December 31, 1921	112,761.00
(g) During the first quarter of the year 1922, that is, from January 1, 1922, to and including March 31, 1922	616,507.00
(h) During the second quarter of the year 1922, that is, from April 1, 1922, to and including June 30, 1922 ..	831,594.00

"5.—That the defendant, claiming to act under the authority of Section 1459 of Act 2711 known as the Administrative Code of 1917, levied and assessed against the plaintiff a percentage tax of one per centum (1%) on the aforesaid sales values of said raw sugar as follows:

(a) 1% of	₱2,059,897.00	₱20,598.97
(b) 1% of	91,608.00	916.08
(c) 1% of	540,066.00	5,400.66
(d) 1% of	1,388,011.00	13,880.11
(e) 1% of	450,698.00	4,506.98
(f) 1% of	112,761.00	1,127.61

(g) 1% of	616,507.00	6,165.07
(h) 1% of	831,594.00	8,315.94

And plaintiff in order to avoid the exaction of penalties for nonpayment of the tax, involuntarily and under protest did pay to the defendant in due time all the amounts above specified, making in all the total sum of ₱60,911.42, Philippine Currency.

"6.—That plaintiff duly filed its protests against the payment of all of the aforesaid taxes on the grounds that said taxes were illegal and that plaintiff was exempt therefrom by the terms of Section 1460 of Act 2711 commonly known as the Administrative Code of 1917.

"7.—That the defendant overruled and denied the aforesaid protests of plaintiff and refused, on demand, and still persists in refusing to return to plaintiff the total amount of said taxes, or any part thereof.

"8.—That thereupon, on the 14th day of September, 1922, plaintiff filed its complaint herein; that on the 11th day of October, 1922, the defendant filed his answer to said complaint, admitting all the allegations contained in said complaint, but setting up as special defense the fact that plaintiff is not the own-

er of the land where the cane ground by it was grown, and that plaintiff in grinding said cane was a manufacturer and as such was subject to tax under section 1459 of Act No. 2711, known as the Administrative Code of 1917; whereupon this cause being at issue, the parties have stipulated and agreed to submit this cause for decision upon the within stipulation on an agreed statement of facts."

The court below held that the facts stipulated were practically identical with those agreed upon in the case of Central Azucarera de Bais vs. Wenceslao Trinidad (46 Phil., 492) and, in accordance with our decision in that case, rendered judgment in favor of the defendant and dismissed the plaintiff's complaint.

Upon appeal to this court by the plaintiff, counsel makes the following assignments of error:

"1.—The lower court erred in holding that plaintiff is a manufacturer in the sense of constituting it a merchant within the meaning of section 1459 of the Administrative Code of 1917.

"2.—The lower court erred in holding that plaintiff is not entitled to the exemption provided for in section 1460 paragraph B of the same code."

Section 1459 reads as follows: "Percentage tax on merchants' sales—All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold.

"The following shall be exempt from this tax:

"(a) Persons engaged in public market places in the sale of food products at retail, and other small merchants whose gross quarterly sales do not exceed two hundred pesos.

"(b) Peddlers and sellers at fixed stands of fruit, produce, and food, raw or otherwise, the total selling value whereof does not exceed three pesos per day and who do not renew their stock oftener than once every twenty-four hours.

"(c) Producers of commodities of all classes working in their own homes, consisting

of parents and children living as one family, when the value of each day's production by each person capable of working is not in excess of one peso.

"'Merchant,' as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production, and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

The pertinent part of Sec. 1460 reads as follows:

"In computing the tax above imposed, transactions in the following commodities shall be excluded:

• • • • •

"(b) Agricultural products when sold by the producer or owner of the land where grown, or by any other person other than a merchant or commission merchant, whether in their original state or not."

The question as to whether a sugar central functioning under milling contracts with the planters should be regarded as a merchant under Sec. 1459 has been the subject of much discussion, and several theories in regard thereto have been advanced. At first it was thought that such sugar centrals should be considered contractors under Sec. 1462 of the Administrative Code, but this theory was rejected by our decision in the case of La Carlota Sugar Central vs. Trinidad, 43 Phil., 816. That case was without doubt correctly decided, but the decision contained certain expressions which afterwards led to the contention that the relation between the sugar centrals and the planters is that of partners in the production of sugar; that sugar is an agricultural product; and that consequently both the planters and the sugar centrals are, under Subsection (b) of Sec. 1460 exempt from the percentage sales tax. The weakness of this contention is that no consideration is given to the distinction between the production of the raw material, sugar cane, and the manufacture of the finished product, centrifugal sugar. This distinction is well brought out in the case of Allen vs. Smith, 173, U. S. 389, in which the United States Supreme Court says:

> "It is quite evident that Allen himself was not the producer of the sugar. He plant-

ed the crop of cane upon his own plantation. He had given notice and a bond to the Commissioner of Internal Revenue, and had applied for a license; but he had done nothing toward the production of the sugar at the time of his death beyond raising the cane, which certainly would not have entitled him to be considered a producer of the sugar. The 'producer' does not differ essentially in its legal aspects from the word 'manufacturer', except that it is more commonly used to denote a person who raises agricultural crops and puts them in a condition for the market. In the case of sugar a process of strict manufacture is also involved in converting the cane into its final product. In a number of cases arising in this court under the revenue laws, it is said that the word 'manufacture' is ordinarily used to denote an article upon the material of which labor has been expended to make the finished product. That such product is often the result of several processes, each one of which is a separate distinct manufacture, and usually receives a separate name; or, as stated in Tide Water Oil Co. vs. United States, 171 U. S. 210, 216: 'Raw materials may be and often are subjected to successive processes of manufacture, each one of

which is complete in itself, and several of which may be required to make the final product. Thus logs are first manufactured into boards, planks, joists, scantling, etc., and then by entirely different processes are fashioned into boxes, furniture, doors, window sashes, trimmings and the thousand and one articles manufactured wholly or in part of wood. The steel spring of a watch is made ultimately from iron ore, but a large number of processes or transformations, each successive step in which is a distinct process of manufacture, and for which the article so manufactured receives a different name.' *So the one who raises the cane is undoubtedly entitled to be considered the producer of the cane, but he is not the producer of the sugar. That appellation is reserved for him who turns out the finished product.*" (The italic are ours.)

Though the decision in the case of Allen vs. Smith related to bounties for the production of sugar under the tariff act of October 1, 1890, and not to a tax, the underlying principle is the same and the foregoing quotation applies with full force to the question here at issue; the planting and production of sugar cane is one thing and the manufacture or production of sugar is another thing.

In the present case we have this situation: Section 1459 of the Administrative Code imposes a tax of one percent on sales by manufacturers of "articles of their own production." Section 1460 of the same code provides that "Agricultural products when sold by the producer or owner of the land where grown" shall, in computing the tax, be excluded. The plaintiff sold large quantities of sugar for its own account and admits that it is engaged in the production of centrifugal sugar and that the sugar in question was manufactured or milled by it from sugar cane not grown on its own land. It further admits that it manufactured the sugar under a pre-existing so-called milling contract whereby it was to receive one-half of the resulting centrifugal sugar, the other half going to the growers of the cane. The plaintiff does not pretend to be other than a manufacturer of sugar and admits that the cane from which the sugar was produced belonged to the cane-growers or planters. On the other hand, the planters do not claim to have had anything to do with the manufacture of the sugar as distinguished from the production of the cane, nor is it even suggested that they had any control whatever over the manufacturing processes subsequent to the delivery of the cane. In a certain sense the central and the planters may, perhaps, be said to have co-operated with each other

but such co-operation possesses none of the essential elements of a partnership.

Upon the law and facts stated, the defendant Collector of Internal Revenue held that the sugar received by the planters under the milling contract and sold by them or for their account, was exempt from the tax, but that the sugar received and sold by the plaintiff for its own account was its own manufacture from cane not grown on its own land and therefore was subject to the tax. Accordingly, no tax was collected on the sugar received by the planters, but the plaintiff was required to pay the tax on the sale of its own share. That is the tax the plaintiff now seeks to recover back.

Perhaps in realization of the weakness of the partnership theory, the argument is now advanced for the first time that inasmuch as it is admitted that the planters were the owners of the cane from which the sugar was produced, plaintiff received the cane merely as a bailment and did not acquire title to any part of the sugar until the milling processes were completed; that therefore the plaintiff in producing the sugar acted merely as the agent of the planters, and that consequently the sugar cannot be regarded as the plaintiff's own production.

This argument is clearly another misconception arising from the confusion of the production and ownership of the cane with the production or ma-

nufacture of the sugar. We are not here dealing with the legal title to the cane; that question might arise in actions between the planters and the Central, but has nothing to do with this case. The plaintiff admits that it manufactured its share of the sugar and sold it for its own account, and that the cane from which the sugar was manufactured was not grown on its own land. That is sufficient to justify the collection of the tax under the statute; there is nothing in the statute requiring the Government to inquire into the legal title to the raw materials from which the articles sold by the manufacturer are produced. It is further to be noted that it is not alleged in the complaint nor stated in the stipulation of facts that the plaintiff produced the sugar as an agent merely.

It may be conceded for the sake of the argument that the delivery of the cane to the plaintiff was a bailment. But if so, the bailment was coupled with the right on the part of the plaintiff to manufacture the cane into sugar of which it, under the pre-existing milling agreement, also had the right to appropriate to itself one-half. It therefore from the beginning of the milling had a direct individual interest in the finished product and to the extent of that interest it did the milling for itself; it held an undivided one-half share in the sugar to be produced, it manufactured the sugar pertaining to its share,

and it sold it for its own account. Notwithstanding their ownership of the cane, the planters at no time had the right to dispose of the plaintiff's share of the sugar, nor does it appear that they had any control over the milling of the cane. Surely, in these circumstances, the plaintiff corporation cannot be considered to have been merely the agent of the planters in the production of its own share of the sugar and, as we have already stated, it is only upon that share that the defendant has imposed the sales tax which the plaintiff now seeks to recover back; no tax has been collected on the share belonging to the planters.

The latest theory brought to the attention of the Court in connection with the matter under discussion, is that the extraction of the juice of sugar cane and its conversion into centrifugal sugar is not a manufacturing process. This idea is in direct conflict with the opinion of the United States Supreme Court in the case of Allen vs. Smith, *supra*, and none of the authorities cited in its support are in point.

The facts are undisputable that the plaintiff corporation, a manufacturer, produced its share of the sugar for its benefit and from cane grown on land other than its own; that it under its contracts had the legal right to mill the cane as soon as it was delivered to the central; and that it sold its share of the sugar for its own account. That is all there

is to the case and is all that is necessary to make the sales taxable under section 1459, *supra*.

The appealed judgment is in accordance with the law and the facts. It is therefore affirmed with the costs against the appellant.

Ten days after the promulgation of this decision final judgment will be entered, and five days thereafter the record will be remanded to the court below.

It is so ordered.

JAMES A. OSTRAND

WE CONCUR:

THOS. A. STREET
GEO. A. MALCOLM
NORBERTO ROMUALDEZ

Johnson, *J.*, concurs *pro hac vice* in separate opinion. Avanceña, *C. J.*, Villamor, *J.*, and Johns, *J.*, *dissent*.

JOHNSON, *J.*, concurring *pro hac vice*:

This action was commenced in the Court of First Instance of the city of Manila on the 14th day of September, 1922. It had its origin in the sugar crop of 1920. It has been pending decision in the

Supreme Court since 1925. It has been argued several times. There exists an *empate*. Considering the length of time since the beginning of the action, in relation with the fact that the Court stands equally divided, and in order to obtain a decision so that the defeated party may appeal to the Supreme Court of the United States and obtain an official decision upon the merits, I have decided to concur for that purpose *pro hac vice*.

I cannot give my consent, however, to the placing of a four-wheel brake upon the principal industry of the country. Sugar is not manufactured. It is simply extracted from the pulp of the sugar cane. The process of extraction is no more a process of manufacture of sugar, except in the machinery used for that purpose, than the making of rice from palay or the digging and hulling of peanuts, or that the coprax becomes a manufactured article by taking it by machinery from the coconut shell.

The plaintiff is a mere employee of the sugar growers. It is employed by them for the purpose of extracting the sugar from the sugar cane at a fixed price. The fact that it receives a portion of the sugar extracted, in lieu of a cash payment, does not make it a manufacturer of sugar. If it received a cash payment for its services, instead of a portion of the sugar, certainly it could not be held to be a manufacturer of sugar under the provisions of the

law applied. In the one case it received sugar for its services; in the other case it would receive cash. In the second case it is certainly not a manufacturer of the sugar upon which the revenue in the present case is attempted to be collected. Certainly no revenue could be collected in the second case upon the theory that it is a manufacturer. In the second case it would have no sugar to sell and therefore could not be considered a merchant.

Castle Bros. Wolf & Sons vs. McCoy, 21 P. R. 300

State vs. American Sugar Refg. Co., 51 La. An. 562

State vs. Eckendorf, 46 La. An. 131

Harttranft vs. Wiegman, 121 U. S. 609

Tidewater Oil Co. vs. U. S., 171 U. S. 210

City vs. Coffee Co., 45 La. An. 87

New Orleans vs. Mannessier, 32 La. An. 1075

United States Treasury Decisions Nos. 15404 and 17579

Kuenzle & Streiff vs. Collector of Customs, 32 P. R. 510

People vs. Roberts, 105 N. Y. 375.

My concurrence is simply *pro hac vice*.

E. FINLEY JOHNSON.

VILLAMOR, *J.*, dissenting:

With due respect for the majority opinion, I am compelled to sustain my dissent in the case of Central Azucarera de Bais *versus* Trinidad, 46 Phil. Rep., 515, considering the identity of the facts established in that case and those agreed upon in the present one.

IGNACIO VILLAMOR.

JOHNS, *J.*, dissenting:—

Again we are forced to dissent. As stated, this case was decided upon the stipulation of facts, of which the ones material to this dissent are as follows:

> "2.—That plaintiff is and at all times hereinafter mentioned has been, the legal owner and operator of a sugar mill at Del Carmen, Pampanga, P. I., and as such owner and operator engaged in the production of raw centrifugal sugar and its by-products.
>
> "3.—That in the operation of its sugar mill above-mentioned for the production of raw centrifugal sugar, plaintiff mills sugar cane grown by sugar cane growers on lands other than those belonging to plaintiff and delivered to it under so-called milling contracts, and as compensation for its services

in milling said sugar cane, plaintiff receives 50% of the resulting centrifugal sugar, and the sugar cane growers receive the remaining 50% of the resulting centrifugal sugar.

"4.—That during the times hereinafter set forth, plaintiff received as its share in the milling of sugar cane belonging to sugar cane growers, raw centrifugal sugar the sales values of which upon being sold by plaintiff were as follows:"

Then follows a detailed statement of the amount and value of the centrifugal sugar as stated in the majority opinion.

The decision of the lower court and the majority opinion in this Court are based upon the decision in Central Azucarera de Bais *vs.* Trinidad, 46 Phil., 492. That decision is predicated upon the following propositions:

"(1) That the sugar central in question is a manufacturer of sugar; (2) that all the sugar manufactured by the central comes from sugar cane delivered by sugar cane growers under milling contracts on a share-to-share basis; (3) that the said sugar central in effect buys its raw material and devotes itself exclusively to converting it into finished merchandise, paying for said raw

material with a share in the finished product instead of with money."

Between the two cases, there is this important distinction. Although under that decision plaintiff in the instant case might be construed as a manufacturer, yet, here, the agreed statement of facts further shows that all of the sugar manufactured by the plaintiff does not come from the planters under milling contracts, and that the milling of the cane in question was only incidental to the operation of plaintiff's mill, and that in legal effect, the plaintiff did not "purchase the cane from the planters, but simply renders to them services for which it is paid in sugar."

Analyzing the contracts between the plaintiff and the planters in the instant case and the stipulation of facts, we have this situation: The planters produced the cane in question which after its production was delivered to plaintiff's mill under a contract in and by which after the cane is made into the form of centrifugal sugar, after which the products are then divided, one-half of which goes to the planters and the other half to the plaintiff. That is to say, the cane itself is at all times the sole and exclusive property of the planters, and that the title to the cane and its products in the form of centrifugal sugar continues to exist and remains in the

planters, until after the cane is made by the plaintiff into the form of centrifugal sugar. When that is completed, a division of the products from the sugar cane in the form of centrifugal sugar is then made. Up to the time the division is actually made, the title to the cane and its products is vested solely and exclusively in the planters, a very important fact which was not decided by this court in the case of Central Azucarera de Bais *vs.* Trinidad, *supra*, and which does not appear from the stipulation of facts in that case.

As appears from the stipulation of facts in the instant case, the plaintiff did not and never did purchase the cane from the planters and never did acquire any right, title or interest in the products of the cane until after it was made into the form of centrifugal sugar and a division of it was then made on a fifty-fifty basis during all of which time, the title to the cane and its products continued to be and remain vested in the planters, an important and decisive point which was never passed upon or decided in the case of Central Azucarera de Bais *vs.* Trinidad, *supra*.

The majority opinion cites and is founded upon the case of Allen vs. Smith, 173, U. S., 389, from which a partial quotation is made. From an examination of that case, it will be found that the only question presented and decided in that case was as

to who was the producer of the sugar and entitled to the government bounty. The syllabus says·

> "1. Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered or to be rendered, objects of public interest to be obtained, production or manufacture to be stimulated, or moral obligations to be recognized.
>
> "2. The manufacturer of the sugar, although not the producer of the cane, is entitled to the bounty given by the act of Congress of August 28, 1894, to producers and manufacturers who had complied with the provisions of the bounty law of 1890, which had been repealed."

In discussing that question, the opinion of the Supreme Court quotes the following language from the decision of the lower court:

> "But there are other clauses of the will which, in our view, extend her right and show that she was the producer after the death of Mr. Allen. She paid all the expenses of the crop; she was to receive the proceeds under the terms of the will; indeed, she was the owner of the crop. She can well be considered,

as we think, the producer. We desire it to be well understood that, in our opinion, the bounty money is no part of the crop or proceeds of the crop. The question was: Who was the owner and producer of the crop after the death of the testator?"

And then says:

"Having thus determined that under the will of Mr. Allen she, through the executors, was entitled to all the proceeds of the manufacture of sugar in the sugar house, the court proceeded to take away from Mrs. Allen a part of these proceeds upon the theory that, by the act of Congress, the bounty was given, not to the manufacturer of the sugar, but to the producer of the cane. In doing this it necessarily took from Mrs. Allen a part of the bounty belonging to her as manufacturer of sugar under the act of Congress, and gave it to the legal heirs of Allen, because they had produced the cane from which the sugar had been manufactured."

And further says:

"The theory upon which the court did this is thus stated in the opinion: 'The end of the bounty was to encourage the production

of cane. It devolved upon us to determine by whom the cane was produced. In our judgment, after carefully reading the act, it is evident that the producer was to be the first to receive the benefit of the bounty.... The act (although it includes the manufacture of cane into sugar as one of the essentials) places the manufacture of the sugar in matter of the bounty scheme in a secondary position. In other words, in our view production was a first and manufacture a secondary consideration. Each, however, was essential in order to enable the producer to recover the bounty.' The conclusion of the court was that, as the cost of cultivation was about equal to the cost of manufacture, the heirs at law were entitled to one half of the bounty and Mrs. Allen the other half."

And in its own discussion of the case, the Court says:

"It is quite evident that Allen himself was not the producer of the sugar. He had planted the crop of cane upon his own plantation. He had given notice and bond to the Commissioner of Internal Revenue, and had applied for a license; but he had done nothing toward the production of the sugar at the

> time of his death beyond raising the cane, which certainly would not have entitled him to be considered a producer of the sugar."

From all of which, it appears that Allen himself was not the producer of the sugar, and it is very apparent that the only question presented and decided in that case was who was entitled to the government bounty. Yet, in its final analysis, the majority opinion in the instant case is founded on that decision.

Much more could be said. But suffice it to say that we are clearly of the opinion that each one of plaintiff's assignments of error is well taken and should be sustained, and that the judgment ought to be reversed, and for such reasons, we dissent.

CHARLES A. JOHNS

WE CONCUR:—

RAMON AVANCEÑA.

On the 13 day of February, 1928, the Clerk of the Court entered the following final judgment:

> "The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon

the record, its decision and order for judgment having been filed on the 2nd day of February, A. D., nineteen hundred and twenty-eight;

"By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 5th day of January, nineteen hundred and twenty-five, and from which the above-entitled appeal was taken, be and the same is hereby, affirmed with the costs against the appellant.

"It is further ordered that the appellee recover from the appellant the sum of ₱40.00, as costs.

(Sgd.) V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

On February 13, 1928, counsel for plaintiff and appellant excepted to the decision rendered by the Supreme Court on the 2nd day of February, 1928, as well as to the final judgment entered, and gave notice of their intention to apply to the Supreme Court of the United States for a writ of certiorari for the review of said decision and judgment, and prayed for the stay of execution, which said excep-

tion and intention to apply for a writ of certiorari is in words and figures as follows, to- wit:

(HEADING AND TITLE)
EXCEPTION AND NOTICE OF APPEAL

Now comes the plaintiff in the above-entitled cause by its undersigned attorneys, and hereby excepts to the decision rendered by this Court on the 2nd day of February, 1928, in the above-entitled action and also excepts to the final judgment entered therein.

Notice is hereby given that the plaintiff intends to petition the Supreme Court of the United States for a writ of certiorari for the revision of the decision and judgment of this Court and said plaintiff hereby makes application for the retention of the record in said cause in this Court pending the preparation and certification of said record and the preparation of said petition to the Supreme of the United States.

The grounds, *inter alia*, upon which the plaintiff intends to petition the Supreme Court of the United States for a writ of certiorari for the revision of the decision and

judgment of this Court herein above referred to are:

1. That the decision and judgment of this Court are contrary to the law and the evidence;

2. That in this action recovery is sought of an amount in excess of Twenty-five Thousand Dollars ($25,000.00);

3. That the decision rendered in this case has been made possible only by the concurrence *pro hac vice* of one of the members of this Court, such concurrence, however, having been made for the sole purpose of disposing of this case and of permitting the defeated party to appeal to the Supreme Court of the United States and obtain therefrom an official decision upon the merits of the case.

Plaintiff also prays for a stay of enforcement of the judgment in this case during the pendency of the application for a writ of certiorari and of the proceedings to be had in the Supreme Court of the United States.

Manila, Philippine Islands, February 13, 1928.

PAREDES, BUENCAMINO & YULO
BY JOSE YULO
Attorneys for Plaintiff-Appellant
420 Pacific Building, Manila.

On February 14, 1928, the Supreme Court entered the following order:

> "Considering the motion of the attorneys for the plaintiff-appellant in case R. G. No. 23985, Pampanga Sugar Mills vs. Wenceslao Trinidad, etc., excepting to the decision heretofore rendered by this Court as well as to the final judgment entered therein, and giving notice of its intention to petition the Supreme Court of the United States for a writ of certiorari for the revision of said decision and judgment, and praying for a stay of enforcement of the judgment during the pendency of the application and of the proceedings to be had in the Supreme Court of the United States: Exception noted and the amount of the bond for the stay of the enforcement of judgment is hereby fixed at ₱1,000.00 to be filed with this Court within ten days from notice hereof and to be approved by Mr. Justice Ostrand, after hearing the defendant as to the solvency of its sureties."

On February 23, 1928, plaintiff filed with the Clerk's Office a supersedeas bond in the amount of ₱1,000.00 which was duly approved by Associate Justice James A. Ostrand.

United States of America
PHILIPPINE ISLANDS

IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

I, V. ALBERT, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing .....( ) printed pages contain a true and correct translation and transcript of the record of the case entitled Pampanga Sugar Mills, plaintiff and appellant, vs. Wenceslao Trinidad, Collector of Internal Revenue for the Philippine Islands, defendant and appellee, bearing No. 23985 of the General Register of this Supreme Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this ..... day of May A. D. nineteen hundred and twenty-eight.

V. ALBERT
Clerk, Supreme Court of the Philippine Islands

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 22, 1928

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(16)

Office Supreme Court, U. S.
FILED
JUL 30 1928
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

.....Term,.....

No. 325

PAMPANGA SUGAR MILLS,
Petitioner,

VERSUS

WENCESLAO TRINIDAD,
as Collector of Internal Revenue
of the Philippine Islands,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS AND BRIEF IN SUPPORT THEREOF

QUINTIN PAREDES,
FELIPE BUENCAMINO, JR.
Attorneys for Petitioner,
420 Pacific Building, Manila

JOSE YULO
Of Counsel.

12472 Sugar News Print, Manila, P. I.

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Supreme Court of the United States

..... Term, ...

No. .....

PAMPANGA SUGAR MILLS,
Petitioner,

VERSUS

WENCESLAO TRINIDAD,
as Collector of Internal Revenue
of the Philippine Islands,
Respondent.

To the Honorable, the Supreme Court
of the United States:

Petitioner herein, the Pampanga Sugar Mills, respectfully prays that a writ of certiorari may issue to review the judgment of the Supreme Court of the Philippine Islands rendered on February 13, 1928, in the case therein then pending entitled "Pampanga Sugar Mills, plaintiff-appellant, *versus* Wenceslao Trinidad, Collector of Internal Revenue of the Philippine Islands, defendant-appellee," being Case No. 23985 in said Court.

THE CASE

The case was originally brought in the Court of First Instance of Manila for the purpose of recovering certain Internal Revenue taxes paid under protest by petitioner during the period commencing with the third quarter of 1920 up to and including the second quarter of 1922, amounting altogether to Sixty Thousand Nine Hundred and Eleven Pesos and Forty-two Centavos (₱60,911.42), Philippine Currency.

THE FACTS

The facts involved in the case appear in a stipulation filed by the parties under date of September 14, 1924. (Record, pp. 24-29.) Briefly stated, the material facts are:

Petitioner, during all the time mentioned in the complaint, owned and operated a sugar mill at Del Carmen, Province of Pampanga, Philippine Islands. In the operation of said sugar mill, petitioner milled "sugar cane grown by sugar cane growers on lands other than those belonging to plaintiff (petitioner) and delivered to it under so-called milling contracts, *and as compensation for its services in milling said sugar cane*," petitioner received 50% of the resulting raw centrifugal sugar. During the period from July 1, 1920 to June 30, 1922, both dates inclusive, petitioner had received from the sugar cane growers,

as compensation for its services in milling their sugar cane, raw centrifugal sugar which upon being sold resulted in a total sales value of P6,091,142.00. The respondent claiming authority under the provisions of Section 1459 of Act 2711, known as the Administrative Code of 1917, levied and assessed against petitioner a tax of one per centum (1%) on the sales value of said raw centrifugal sugar. In order to avoid the exaction of penalties under the law, petitioner involuntarily and under protest paid said tax to the respondent, but at the same time filed its written protest against said payment on the ground that said assessments were illegal and that it was exempt therefrom by reason of Section 1460 of the same Act.

THE LAW

The pertinent portions of sections 1459 and 1460 of Act No. 2711, known as the Administrative Code of 1917, relied upon by the parties provide:

> "SEC. 1459. *Percentage tax on merchants' sales.*— All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory

proof of the return thereof to the Philippine Islands unsold.

* * * * * * *

'Merchant', as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

"SEC. 1460. *Sales not subject to merchants' tax.*— In computing the tax above imposed transactions in the following commodities shall be excluded:

"(a) Things subject to a specific tax.

"(b) *Agricultural products when sold by the producer or owner of the land where grown, or by any other person other than a merchant or commission merchant, whether in their original state, or not.*" (Italics ours.)

MAIN POINT AT ISSUE

The main question to be determined in this case is whether or not, by converting sugar cane owned by sugar cane growers into raw centrifugal sugar and thereafter selling the raw centrifugal sugar received by it as compensation for such service, petitioner becomes a merchant as defined by Section 1459 of Act No. 2711 and therefore subject to the tax therein provided; and, if it were so subject to the tax under Section 1459, whether or not it comes within the exemptions set forth in Section 1460 of the same Act.

GROUNDS FOR ALLOWANCE OF THE WRIT

1. The decision of the Supreme Court of the Philippine Islands in so far as the determination of the legal points involved in the case is concerned did not receive the vote of the required number of Justices as provided by law, because

a. Section 138 of Act No. 2711 (the Administrative Code of 1917), in part provides:

> "Six of the judges of the Supreme Court, lawfully convened, shall be necessary to form a quorum for the transaction of any business involving the admiralty jurisdiction of the court, or for the final disposition of a civil case in which the amount in controversy exceeds ten thousand pesos or a criminal case in which the judgment of the lower court imposed death, or imprisonment for more than ten years, or a fine of more than ten thousand pesos, *and the concurrence of five judges shall be necessary for the pronouncement of a judgment*, but when there is a vacancy in said court five judges shall constitute such quorum, and the concurrence of four shall suffice for the pronouncement of the judgment. In all other cases the presence of four judges shall be sufficient to form a quorum, and the concurrence of three judges for the pronouncement of a judgment." (Italics ours.)

b. The amount involved in this case is more than Ten Thousand Pesos (₱10,000.00).

c. Only four justices concurred in the majority opinion, and the fifth justice who voted for the confirmation of the judgment of the lower Court, did so *pro hac vice*, and for the sole purpose of definitely

disposing of the case in the Supreme Court of the Philippine Islands and in order to permit the defeated party to take this case to the "Supreme Court of the United States and obtain an official decision upon the merits," and in his concurring opinion the said Justice expressly dissented from the legal conclusions upon which the judgment of the Court is based. (Concurring opinion of Mr. Justice Johnson, Record, pp. 62-64).

2. Although the judgment of the Supreme Court of the Philippine Islands is based upon an interpretation of a local statute, by reason of the foregoing, such interpretation is not binding upon this Honorable Court.

3. The amount involved in this controversy exceeds the sum of Twenty-Five Thousand Dollars ($25,000.00), and is therefore within the jurisdiction of this Honorable Court.

4. The decision of the point involved in this case is important to the entire sugar industry of the Philippine Islands in view of the fact that a ruling that the plaintiff-appellant is liable for the tax provided in section 1459 of Act No. 2711, will mean the subjection of all sugar mills to two kinds of internal revenue taxes on one and the same transaction, that is, the tax provided in said section 1459 and that provided in section 1462 of the same act as amended by Act 3082, the pertinent portions of which follow:

"SEC. 1462. *Percentage tax on road, building, irrigation, artesian well, waterworks, and other con-*

struction work contractors, proprietors or operators of dockyards, and others.—Road, building, irrigation, * * *, and other construction work contractors, * * *; proprietors or operators of dockyards, * * *, *sugar centrals*, and rice mills; persons selling light, heat or power; keepers of hotels, restaurants, cafes, or refreshment parlors; and warehousemen, stevedores, dressmakers, * * * shall pay a tax equivalent to one per centum of their gross receipts: * * *."

5. As more fully shown in the brief appended hereto, it is important that the question herein involved be authoritatively and finally adjudged by this Honorable Court upon and after a full presentation to the Court of the merits of said question, in order to prevent future litigation and to promote justice to all concerned.

WHEREFORE, it is respectfully prayed that this petition for a writ of certiorari be granted.

Manila, P. I., June 30th, 1928.

QUINTIN PAREDES,
FELIPE BUENCAMINO, JR.
Attorneys for Petitioner
420 Pacific Building, Manila.

JOSE YULO
Of Counsel.

Supreme Court of the United States

..... Term .....

No. .....

PAMPANGA SUGAR MILLS,
Petitioner,

VERSUS

WENCESLAO TRINIDAD,
as Collector of Internal Revenue
of the Philippine Islands,
Respondent.

BRIEF FOR PETITIONER

This is a petition for a writ of certiorari under the provisions of Sec. 7 of the Act of Congress of February 13, 1925 (43 Stat. at L. 940, Fed. Stat. Anno. Supp. 1925, p. 90) giving jurisdiction to this Honorable Court to examine by certiorari the final judgment and decree of the Supreme Court of the Philippine Islands in all cases in which the Constitution or any statute, treaty, title or privilege of the United States is involved, or in causes in which the value in

controversy exceeds $25,000.00. Under section 8 of the Act, application for the writ must be made within six months after the entry of the judgment or decree sought to be reviewed. The judgment of the Supreme Court of the Philippine Islands involved in this petition was entered on February 13, 1928 (Record, p. 72.) It is urged that a writ of certiorari should issue in this case for the reason, among others, that the value in controversy involved in this cause amounts to more than $25,000.00, and for the further reason that the decision of the Supreme Court of the Philippine Islands was made possible only by the concurring vote of one of the justices of said Court who expressly announced that his vote was given in order that there may be a decision from which an appeal may be taken to this Court and that the issues involved in this case may be finally determined upon the merits thereof.

OPINION OF THE COURT BELOW

The opinion of Mr. Justice Ostrand of the court below was concurred in by Justices Street, Malcolm and Romualdez. Mr. Justice Johnson concurred *pro hac vice* in a separate opinion wherein, as stated above, he expressly announced that while he agreed with the theory of the petitioner herein, still in view of the fact that for a number of years there existed

a deadlock among the members of the Supreme Court, he did vote for the confirmance of the decision of the lower court in order that there may be a decision from which the defeated party may appeal to the Supreme Court of the United States and obtain an official decision upon the merits. Mr. Justice Villamor dissented in a separate opinion and Chief Justice Avanceña and Mr. Justice Johns joined in filing another dissenting opinion.

Under section 138 of the Administrative Code of 1917, the vote of five members in the Supreme Court is necessary in order that there may be a decision on any case pending before it in which the amount involved is in excess of ₱10,000.00. Due to the inhibition by one of the justices of the Supreme Court from taking part in the disposition of this case, only eight justices took part in the decision and for three years four justices were of the opinion that the decision of the court should be confirmed, while the other four justices were of the opinion that the decision should be reversed. On account of the fact that the deadlock continued after repeated hearings granted to the parties, Mr. Justice Johnson as already stated concurred *pro hac vice* with those voting for the confirmation of the lower court's decision, but in his concurring opinion the expressly announced his view that the said decision should be reversed.

The majority opinion, in reaching the conclusion that petitioner is liable for the payment of the tax provided in section 1459 of the Administrative Code, held:

1. That the raw centrifugal sugar upon which the tax is imposed was manufactured and sold by the petitioner, and therefore the said petitioner is a manufacturer selling articles of its own production, and as such must be considered a merchant under section 1459 of Act No. 2711 (the Administrative Code of 1917).

2. That petitioner does not come within the exemption provided in section 1460 of the same Act, because while it is the producer of the raw centrifugal sugar, the finished product, it is not the producer of the agricultural product, the sugar cane.

3. That in the application of the statute, it is not necessary to inquire into the legal position of the petitioner in the manufacture of the raw centrifugal sugar which is being taxed, the sole criterion being the fact that it produced said sugar by its own manufacture and it thereafter sold the same.

Mr. Justice Johnson, in his concurring opinion, said that while he voted with the majority, he did *not* agree with their conclusion on the point of law involved. He held:

1. That the extraction of the sugar from the sugar cane does not involve a process of manufacture.

2. That petitioner is a mere employee of the sugar cane growers, being paid for its service in milling their cane with a fixed share in the sugar, in lieu of cash.

3. That no tax could be collected if the services of petitioner were paid in cash, therefore such tax cannot be collected just because payment is made in specie.

Mr. Justice Villamor, dissented upon the same grounds set forth in his dissenting opinion in the case of Central Azucarera de Bais vs. Trinidad, 46 Phil. 501.

Mr. Justice Johns, with whom Chief Justice Avanceña concurred, filed a separate dissenting opinion in which he held:

1. That in view of the stipulation of facts in this case, petitioner cannot in any way be considered as having in effect purchased the sugar cane from the sugar cane growers, and, therefore, the doctrine in the case entitled "Central Azucarera de Bais vs. Wenceslao Trinidad," 46 Phil. 492, is not applicable to the instant case.

2. That petitioner never obtained legal title to the sugar cane or to the centrifugal sugar while in

process of manufacture, and therefore it could not be said that the sugar is of its own production.

3. That all of the errors assigned by plaintiff-appellant in its brief were well taken and the decision of the lower Court should be reversed.

THE FACTS

Briefly stated, the facts are:

Petitioner owns and operates a sugar mill at Del Carmen, Province of Pampanga, Philippine Islands. In the operation of this sugar mill it mills sugar cane grown by sugar cane growers on lands other than those belonging to it, and as compensation for its services in converting such sugar cane into raw centrifugal sugar, it receives from the owners of the sugar cane 50% of the raw centrifugal sugar resulting from the milling thereof. From July 1, 1920 to June 30, 1922, both dates inclusive, petitioner received from sugar cane growers in the manner aforementioned raw centrifugal sugar which upon being sold resulted in a total sales value of ₱6,091,142.00.

The respondent herein, claiming authority under section 1459 of Act No. 2711 of the Philippine Legislature, commonly known as the Administrative Code of 1917 (and which for convenience will hereafter be referred to as such) levied a tax of one

per centum (1%) on the total sales value of said sugar, and petitioner, in order to avoid the penalties provided by law, involuntarily and under protest paid said tax, amounting in all to ₱60,911.42. Written protest was filed with respondent, alleging that the collection of said tax is illegal and that petitioner is exempted from the payment of said tax by reason of section 1460 of the same Act.

THE STATUTE

For convenience, we are again quoting the pertinent portions of sections 1459 and 1460 of the Administrative Code of 1917, to wit:

> "SEC. 1459. *Percentage tax on merchants' sales.*—All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value of the things in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold.
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> • • • • • •
>
> *'Merchant', as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character. Except as specially pro-*

vided, the term includes manufacturers who sell articles of their own production and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

"SEC. 1460. *Sales not subject to merchants' tax.*— In computing the tax above imposed transactions in the following commodities shall be excluded:

"(a) Things subject to a specific tax.

"(b) *Agricultural products when sold by the producer or owner of the land where grown, or by any other person other than a merchant or commission merchant, whether in their original state, or not.*" (Italics ours.)

THE QUESTIONS OF LAW

In submitting this case to this Honorable Court, petitioner relies on the following propositions:

1. The decision of the Supreme Court of the Philippine Islands in the instant case is not conclusive upon this Honorable Court, notwithstanding the fact that it involves mainly the interpretation and application of a local statute.

2. Petitioner herein is not a manufacturer in the sense of constituting it a merchant under the provisions of section 1459 of the Administrative Code of 1917.

3. Petitioner is included within the exemptions provided in section 1460 of the same Code.

ARGUMENT

I

The decision of the Supreme Court of the Philippine Islands in the instant case is not conclusive upon this Honorable Court, notwithstanding the fact that it involves mainly the interpretation and application of a local statute.

Section 138 of the Administrative Code of 1917 provides that when there is no vacancy in the Supreme Court at least five justices must concur in the pronouncement of a judgment in a case involving more than ₱10,000.00. In the instant case the amount involved is ₱60,911.42. There is no vacancy in the Supreme Court. Only four justices concurred in the majority opinion, and the fifth justice who voted with the majority filed a separate concurring opinion in which he expressly states that "in order to obtain a decision, so that the defeated party may appeal to the Supreme Court of the United States and obtain an official decision upon the merits," he has decided "to concur for that purpose *pro hac vice*." His concurring opinion further shows that he dissents entirely from the fundamental doctrines underlying the opinion of the majority. (See concurring opinion of Mr. Justice Johnson. Record pp. 62-64.)

While ordinarily a final judgment by the local Supreme Court on the interpretation of a local tax statute would not be disturbed by this Honorable Court, we submit that the special circumstances surrounding the rendition of the judgment in this case, would warrant a full review of the decision of the Supreme Court of the Philippine Islands and the rendering of a decision by this Honorable Court on the merits of this case. Otherwise, petitioner would be greatly prejudiced by a final judgment lacking in the essential safeguards provided by law.

II

Petitioner is not a manufacturer in the sense of constituting it a merchant under the provision of section 1459 of the Administrative Code of 1917.

Previous Judicial and Administrative Rulings

The manufacture of raw centrifugal sugar in the Philippine Islands is of comparatively recent beginnings. The first case involving the application of the Internal Revenue laws to owners and operators of sugar mills was decided by the local Supreme Court on September 26, 1922. (La Carlota Sugar Central v. Wenceslao Trinidad, 43, Phil. 816.) The facts in that case, as stated in the decision, were as follows:

"That the plaintiff is a corporation organized and existing under the laws of the Philippine Islands; that the defendant is the Internal Revenue Collector of the Philippine Islands; that the plaintiff is the owner of a sugar mill located at La Carlota, Province of Occidental Negros, Philippine Islands, established for the purpose of producing raw centrifugal sugar from sugar cane delivered to it by sugar cane growers; that all the sugar produced at said mill is under an agreement with the growers of sugar cane, by virtue of which agreement the plaintiff receives for its work 45 per centum of the sugar produced and the owner of the cane receives 55 per centum of the same; that during the first and second quarters of the year 1921 the paintiff shipped from the Philippine Islands, for sale abroad, raw centrifugal sugar as its share of the sugar produced in said mill, of the value of ₱1,963,825; and that the defendant as Collector of Internal Revenue, claiming to be authorized so to do by section 1462 of Act No. 2711, treated the plaintiff's share of the raw sugar so produced, as gross receipts subject to taxation under the provisions of said section, and levied, assessed, and collected, by way of percentage tax from the plaintiff, under protest, the sum of ₱19,638.25."

The local Supreme Court, by a unanimous decision, held, with respect to the relation between the sugar central and the sugar cane growers,—

"Two persons enter into a contract, by virtue of which the first furnishes the material and the second, the labor, upon condition that they divide the proceeds of the finished product in proportion to the

value of the material and labor. Are such persons contractors, falling under the provisions of said section? The answer must be in the negative. They are partners and are, in no sense, contractors under the meaning of that word as used in said section.

"Is not the agreement between the plaintiff herein and the growers of the sugar cane more analogous to that of a partnership than to that of a contractor and a contractee? One furnishes the material for the sugar; the other furnishes the labor and the means necessary to produce the sugar. They agree to divide the product, evidently in proportion to the value of the raw material with that of the finished product. Is not the relation of the plaintiff with the growers of the sugar cane more nearly that of a partnership or "de una sociedad de cuentas en participación?" If that is so, the plaintiff cannot be regarded as a contractor either in the general or special signification of that term. While it may be true that the plaintiff used its own means and methods for the production of sugar, without submitting itself to the control as to petty details by the growers of the sugar cane, yet by virtue of the very terms of the agreement it cannot be regarded as a contractor for the reason that, by virtue of the terms of the agreement, both the plaintiff and the growers of the sugar cane are joint owners in the proportion agreed upon of the finished product. While perhaps they cannot be technically regarded as partners, their relation is more like that of a partnership than of contractor and contractee."

At the time the La Carlota case was decided, Act 3082 of the Philippine Legislature amending section 1462 of the Administrative Code of 1917, had not

been passed. Sugar centrals were not included specifically among those business to be taxed under the original Administrative Code provision. In spite of this, the Collector of Internal Revenue of the Philippine Islands had been taxing sugar centrals operating in the same manner as the La Carlota Sugar Central under section 1462 of the Administrative Code of 1917, and the local Supreme Court held that this could not be done.

On account of this decision by the local Supreme Court, and others touching on the interpretation of the word "contractor" as used in said Section 1462, the Philippine Legislature in March, 1923, passed Act No. 3082, amending said section in such a way as to broaden its scope by expressly including therein among others, the owners and operators of sugar centrals.

Upon the enactment of Act No. 3082, the Collector of Internal Revenue of the Philippine Islands made and published the following ruling:

"TAX ON SUGAR CENTRALS—SECTION 1459, ADMINISTRATIVE CODE, ACT NO. 3065; SECTION 1462 AS AMENDED BY ACT NO. 3082.

"(a) In regard to the receipts derived by sugar centrals from sugar produced from sugar cane purchased from the growers the tax established in Section 1459 of the Administrative Code and Act No.

> 3065 and not that under Section 1462 of the Administrative Code as amended by Act No. 3082, should be paid, because in that respect the centrals would be partaking of the nature of manufacturers. It is well settled that an occupation or business does not become exempt from tax by being conducted with some other occupation or business for which a tax has been paid. (Sec. 1453, Administrative Code.)" (XXI Off. Gaz. 2824.)

Under this ruling, it is admitted that the business of a sugar central partakes the nature of that of a manufacturer as provided in Section 1459 of the Administrative Code of 1917, *only* when such sugar central *purchases* the sugar cane which it converts into sugar.

On November 17, 1924, the Supreme Court of the Philippine Islands decided the case of Central Azucarera de Bais vs. Wenceslao Trinidad. (46 Phil. 492.) The facts in that case were essentially the same as those in the La Carlota Central case, the only difference being that while in the last mentioned case the Collector of Internal Revenue claimed authority for collecting the tax under section 1462 of the Administrative Code, in the Central de Bais case he claims such authority under section 1459 of the same Code, holding that the sugar central is a manufacturer, and therefore, a merchant within the purview of said provision.

In considering the nature of the tax provided in Section 1459 of the Administrative Code, the majority opinion said:

> "The tax we are considering is a tax on certain transactions which are made taxable when carried out by merchants as distinguished from persons who do not devote themselves to commercial operations."

The decision then concluded that the sugar central is liable for the tax because being "a manufacturer" of sugar, it "in effect, *buys* its raw material and devotes itself *exclusively* to converting it into finished merchandise," and "it can make no difference" whether in buying such raw material, it "pays for it in merchandise or with money." The decision further stated that "it may, perhaps, not always be easy to draw the line of demarcation between one business and the other, but difficulties of that sort are frequently encountered in the interpretation of the law."

It is interesting to note that the same four justices who concurred in the majority opinion in the instant case, concurred in the majority opinion in the Central de Bais case. Three justices dissented, and Mr. Justice Johns, one of the dissenting justices in the instant case did not take part. There was a vacancy then in the Supreme Court, so that the vote of only four justices was necessary for a decision.

Both the majority and dissenting opinions agree as to the nature of the tax; but while the majority concludes from the facts that the sugar central, in effect, bought the raw materials, the dissenting justices hold that the relation of the sugar central to the plaintiff is that of a cooperator, or "as has been said in La Carlota Sugar Central vs. Trinidad (43 Phil. Rep., 816), is a partner or coparticipant of the sugar cane growers, for, while the latter supply the cane, the central furnishes the means for producing the sugar." Speaking of manufacturers under the purview of Section 1459 of the Administrative Code, the dissenting opinion says:

> "• • • manufacturers under said section, are those who have fixed places of business of the same nature as, and in competition with, merchants engaged in the sale, barter, or exchange of commodities manufactured by them from raw materials that they purchase, with the object of selling them and, from this commerce and interchange, obtain profits."

The authorities we have just reviewed establish the following propositions:

1. That a sugar central is not a contractor in the sense that this word is used in Section 1462 of the Administrative Code.
2. That the tax provided in Section 1459 of the Administrative Code is by nature a tax on

certain transactions "when carried out by merchants as distinguished from persons who do not devote themselves to commercial operations."

3. That a sugar central is a merchant under Section 1459 of said Code, only when it "*buys* its raw material and devotes itself *exclusively* to converting it into finished merchandise."

To these propositions, a fourth one may be added, which is in itself apparent from the wording of the statute, and that is, that a manufacturer in order to be considered a merchant must sell articles of its own production; in other words, it must manufacture to sell.

> "The incidents of manufacture, as such, apart from those which attach to business generally, consist of the acquisition of material and the disposal of the product. The sale of the manufactured product is properly incident to manufacture. The power to sell is an indispensable adjunct to a manufacturing business * * *." (38 Corpus Juris, Sec. 62, p. 989).
>
> "Still again, is it sufficient for the person in question to be a maker of things with the making of which machinery had a part, more or less, to do, and that on a considerable scale? Is it not essential that he be a seller of the things which he makes? Is not the word used in contrast to the word 'merchant', 'trader', or 'dealer'? The latter sells what

he buys. Does not the manufacturer sell what he makes at least from what he buys? Ordinarily, at least, he must be a seller; for in the very nature of things he cannot keep making things. It is essential for him to sell the things which he makes to keep going." (In Re I. Rheinstron and Sons Co., 207 Fed. 119, 136.)

THE CASE AT BAR

Plaintiff does not buy its raw material and devote itself exclusively to its conversion into the finished product.

The present case may easily be distinguished from the La Carlota Central and the Central de Bais cases. The facts in the present case absolutely preclude all possibility of holding that the sugar central "in effect, buys its raw material and devotes itself exclusively to converting it into finished merchandise."

Paragraph IV of the stipulation of facts (Record, p. 25) expressly states that petitioner "received as its *share in the milling of sugar cane belonging to sugar cane growers*," raw centrifugal sugar, which is the same sugar taxed by the respondent. Paragraph III of the stipulation of facts (Record, p. 25) likewise expressly states that the raw centrifugal sugar so received by petitioner from the sugar cane growers constitutes its "*compensation for its services in milling said sugar cane.*"

The facts as agreed upon by the parties thus clearly establish the legal relation existing between the petitioner and the growers of the sugar cane. Such relationship cannot in anyway be legally held to be that of purchaser and seller. Strictly speaking, it is rather that of bailor and bailee.

> "Where articles are delivered by one person to another who is to perform labor upon them or to manufacture them into other articles for the former, the transaction is a bailment notwithstanding the articles are to be returned in altered form. But if the person by whom the articles are received may deliver in return articles which are not the product of those received the transaction is in effect a sale. So, where wheat is delivered to a miller to be ground and returned in the form of flour, the transaction constitutes a bailment, even, according to some authorities, though the flour returned is not to be ground from the identical wheat delivered; but where wheat is delivered to a miller to be paid for in flour, there is a sale. Likewise, where yarn is delivered to be paid in cloth woven therefrom, it is a sale. *But it has been held that a transaction is not converted into a sale by reason of the fact that the manufacturer is to receive a share in the manufactured article by way of compensation, or is to receive a share in the net profits*, or that his compensation is to be fixed by the selling price of the manufactured goods less commissions and the cost of the raw materials, or by the amount the manufactured goods should be sold for over a fixed price." (6 Corpus Juris, Sec. 9, pp. 1096-1097.)
>
> "The delivery of logs to a sawmill to be sawed into boards within a specified time, the owner and miller

each to have one half of the boards, constitutes a bailment merely, and the bailor retains his general property in the logs until all are manufactured according to the contract." (Pierce v. Schenck, 3 Hill (N.Y.), 28 cited in Note 89, 6 Corpus Juris, p. 1096.)

"• • • In principle, the transaction between the parties to the present action is not different from that involved where the owner of leather delivers it to a manufacturer to be made into shoes (Mansfield v. Converse, 8 Allen, 182); or where the owner of logs delivers them to a miller to be sawed into lumber (Gleason v. Beers, 59 Vt. 581, 59 Am. Rep. 757, 10 Atl. 86, 1 Am. Neg. Cas. 937); or where the owner of milk delivers it to a factory to be made into butter or cheese (First Nat. Bank v. Schween, 127 Ill. 573, 11 Am. St. Rep. 174, 20 N. E. 681); or where the owner of live animals delivers them to another to be kept for compensation (Edgar v. Parsell, 184 Mich. 522, 151 N. W. 714, Ann. Cas. 1917A, 1160; Robinson v. Haas, 40 Cal. 474; Simmons v. Shaft, 91 Kan. 553, 138 Pac. 614). In any of these cases the transaction is a bailment, and it is altogether *immaterial whether the compensation of the bailee is fixed at a definite sum in money, or is a share of the product itself*, a share of the net proceeds of the adventure, a share of the increase, or is computed upon the product of the undertaking. 6 C. J. 1096." (Ferry & Co. v. Forquer, 61 Mont. 336, 29 A. L. R. 642, 646.)

Petitioner did not manufacture to sell, hence, it is not a merchant within the purview of Section 1459 of the Administrative Code.

The statute only considers a manufacturer as a merchant when it sells articles of its own production. In order to be considered a merchant within the terms of the statute, therefore, it must manufacture to sell.

In the instant case, petitioner only gets paid for its services in milling the sugar cane. It does not manufacture for its own account in order to sell the manufactured product. The finished product, as well as the raw material, never did belong to the petitioner, until it has received the sugar in compensation for its services. The planters were the owners of the raw material and the sugar, before, during and after the process of manufacture. Petitioner's title to the sugar did not vest by the mere fact of milling the cane. It required another act on the part of the planters—and that is, the delivery of the sugar in payment of its services. While it was petitioner's labor and machinery that made possible the *physical* conversion of the sugar cane into sugar, yet the sugar cannot be considered legally as the production of petitioner, because it never did belong to petitioner by reason of its manufacture. The entire product of the cane was legally the production of the planters.

It is true that petitioner eventually sold the raw centrifugal sugar which it received from the owners

of the sugar cane; but this sale was only a necessary step to convert petitioner's compensation into money values. Such compensation might have been paid in cash, or a certain proportion of the sales proceeds of the manufactured product; then, no tax can possibly accrue against petitioner under section 1459 of the Administrative Code. Petitioner's position is not altered just because it received compensation in specie.

It is respectfully submitted that petitioner is not a merchant under the purview of section 1459 of the Administrative Code of 1917:

1. Because, although, physically it converted the sugar cane into the raw centrifugal sugar, such sugar was not legally of its own production but was that of the owners of the sugar cane.

2. Because, in converting the said sugar cane into raw centrifugal sugar, it did not manufacture to sell,—it did render services for compensation; and

3. Because it did not *buy* the sugar cane from the sugar cane growers and devote itself exclusively to converting the same into finished merchandise.

EFFECT OF ACT NO. 3082 OF THE PHILIPPINE LEGISLATURE

Act No. 3082, passed in March, 1923, amends Section 1462 of the Administrative Code of 1917 in such a way that operators of sugar centrals are made expressly subject to the payment of the percentage tax therein provided. (See supra, p. 6). There is nothing in Section 1462, as so amended, which would exempt the business therein taxed from the payment of the taxes provided in Section 1459; nor is there a provision in the last named section which would exempt a business paying a tax thereunder from the payment of the tax provided in Section 1462, as amended. On the other hand, Section 1453 of the Administrative Code of 1917 provides, in part:

> "• • • The tax on business is payable for every separate or distinct establishment or place where business subject to the tax is conducted; and *one occupation or line of business does not become exempt by being conducted with some other occupation or business for which such tax has been paid.*"

It is, therefore, clear that should it be decided that the transactions involved in these proceedings are taxable under Section 1459, then such transactions would eventually be subject to the payment of two taxes,—those under Section 1459 and Section 1462, as amended. We submit that this could not have

been the intention of the Philippine Legislature. Double taxation is always contrary to good government and should not be presumed as being intended in any legislation unless such intention is clearly expressed.

We submit, therefore, that by the passage of Act 3082, it was clearly demonstrated that the Philippine Legislature never intended to class sugar centrals milling sugar cane of others for compensation as merchants under Section 1459 of the Administrative Code, and for this reason the taxes sought to be recovered in this case should be declared as having been illegally collected and a refund thereof ordered forthwith.

III

Petitioner is included within the exemptions provided in Section 1460 of the Administrative Code of 1917.

For convenience, we again quote the pertinent provisions of section 1460 of the Administrative Code of 1917:

> "SEC. 1460. *Sales not subject to merchants' tax.*— In computing the tax above imposed transactions in the following commodities shall be excluded:
>
> "(a) Things subject to a specific tax.
>
> "(b) *Agricultural products when sold by the producer or owner of the land where grown, or by any*

other person other than a merchant or commission merchant, whether in their original state, or not." (Italics ours.)

While raw centrifugal sugar has undoubtedly undergone some process of manufacture, yet it must be admitted that in the present case, such raw centrifugal sugar is the *first* marketable form of the sugar cane, an essentially agricultural product. If the purpose of the exemption is to protect agriculture, it must also protect the industry which converts the unmarketable agricultural product into its marketable form. Thus, the exemption expressly includes agricultural products, not in their original state. Raw centrifugal sugar as the direct result of the milling of sugar cane, an agricultural product, must therefore come within the terms of the exempting provision as it is nothing more than sugar cane, or its juice, not in its original state.

The only question therefore to be determined is whether or not, petitioner can be classed among those persons exempted by the statute, to wit:

(a) The producer.

(b) The owner of the land where the agricultural product is grown.

(c) Any other person, other than a merchant or commission merchant.

If it be held that petitioner as the manufacturer of the raw centrifugal sugar is a merchant under section 1459 of the Administrative Code, then it must follow that it is selling articles of its own production, in other words, the petitioner must be the producer of the raw centrifugal sugar. As such producer of the agricultural product, not in its original state, it would come within the exemption provided in the statute.

If it cannot be considered a "producer,' as this term is used in the exempting provision, it can still be classed among the persons, "not a merchant or commission merchant," which are exempted by the statute. The reason for this is clear.

Section 1459 of the Administrative Code, in defining what persons may be considered as merchants who are taxable under said section, provides:

> "Merchant," as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character. *Except as specially provided, the term includes manufacturers who sell articles of their own production and commission merchants* having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

The general comprehensive term "merchant" as used in the statute is thus grouped into three classes:

(1) The merchant, properly speaking, who is engaged in the sale, barter, or exchange of personal property of whatever character;

(2) "The manufacturers who sell articles of their own production"; and

(3) The "commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected."

Section 1460, in excluding a "merchant or a commission merchant" from the exemption, cannot be held to exclude the general comprehensive term "merchant" as defined in section 1459, for in that case the phrase "commission merchant" would be a superfluity, as this class is already included in the generic term "merchant" as defined in said section. Undoubtedly the words "merchant or commission merchant" are used in this exempting provision in their specific sense as distinguished from the third class, the "manufacturer", also included in the definition of the generic term "merchant". Under the general accepted rule of statutory construction that the interpretation of a statute should, whenever possible, give effect to all its parts, this is the only legal construction that can be placed on this exempting clause.

THE RATIONALE OF SECTION 1460

The original exempting clause corresponding to section 1460 of the Administrative Code of 1917 is found in Section 142 of Act No. 1189 of the Philippine Commission which, in part, reads:

> "SEC. 142. The following persons shall be exempted from the payment of the taxes imposed in section one hundred and thirty-nine:
>
> "(a) Agriculturists, on all products of their own production sold by them.
>
> • • • • • •
>
> "(g) Persons whose manufactures consist solely in harvesting and getting into proper condition for their own use or for sale the products of the lands owned or occupied by them, such as the cutting and drying of copra and threshing of rice."

In 1914, Act No. 2339 was passed, revising and consolidating former internal revenue laws. The corresponding provision in this Act is section 41, which reads:

> "*Sales not subject to merchants' tax.*—In computing the tax above imposed transactions in the following commodities shall be excluded:
>
> "(a) Merchandise actually exported by the vendor;
>
> "(b) Things, other than opium, subject to a specific tax;
>
> "(c) Agricultural products when sold by the producer or owner of the land where grown, whether in their original state or not."

This section was later amended by Section 3 of Act No. 2541 which was passed on December 21, 1915, for the purpose, as its title states, of "changing the rates of taxes and additional taxes, creating new taxes, *abolishing others*, and for other purposes." Said section as amended by Act 2541, is incorporated *verbatim* in section 1460 of the Administrative Code. It reads:

> "SEC. 41. *Sales not subject to merchant's tax.*—In computing the tax above imposed, transactions in the following commodities shall be excluded:
>
> "(a) Things subject to a specific tax;
>
> "(b) Agricultural products when sold by the producer or owner of the land where grown, or *by any other person other than a merchant or commission merchant*, whether in their original state, or not."

The italicized portions are the changes in the original section 41 of Act No. 2339.

Act No. 2541, which exempts "any other person, other than a merchant or commission merchant," dealing in agricultural products, whether in their original state or not, from the payment of the merchants' tax was passed in December of 1915. Only ten months before, to be exact, on February 5, 1915, the Philippine Legislature passed Act No. 2479 creating the Sugar Central Board. Section 2 of the Act reads:

> "SEC. 2. It shall be the duty of this board to promote and aid in the establishment of sugar centrals with their machinery, equipment, rights of way, railroads, and other appurtenances for the manufacture of sugar and industries derived therefrom in the sugar-producing provinces, if in its judgment the local conditions warrant the establishment of a sugar central."

Under this Act, the Government authorizes the investment of Two Million Pesos (₱2,000,000.00) of the gold standard fund in bonds of such sugar centrals. The Legislature made it clear that it was the object of the Act to *promote* and *assist* the establishment of sugar centrals in the Philippine Islands.

We submit that when Act 2541 was passed, barely ten months after the creation of the sugar central board, the Legislature must have had in mind Act 2479, the purposes of which would be nullified if the sugar centrals were taxed in the same way as merchants. Hence, the care in not using solely the word "merchant" as an exception to the exemption, but in specifying specially the exceptions as "merchant" and "commission merchant". If the intent was to except all the three classes from the exemption,—"merchants," "manufacturers" and "commission merchants"—it would have been easier to use only the term "merchant" in the exception.

If is therefore clear from the wording of the amendment in Act 2541, and from contemporaneous

enactments, that it was the policy of the government then to promote and assist the manufacture of sugar by sugar centrals, and that amendment should be interpreted so as to give effect to that policy.

ADMINISTRATIVE INTERPRETATIONS

Counsel for the respondent will undoubtedly lay much stress to circulars issued by Mr. Jno. S. Hord, relative to the enforcement of Act 1189, of which that gentleman was the author. We submit that as Act 1189 has been amended so many times that its effects are now very different from the provisions found in the Administrative Code of 1917 such interpretation of the old law cannot have effect against the plain intent and spirit of the statute as amended.

Section 141 of Act 1189, requires "each merchant and manufacturer" to pay a tax on the "gross value in money of all goods, wares, and merchandise sold, bartered, or exchanged," and then defines "manufacturer" in its natural, ordinary, or common meaning. Section 142 enumerates the exemptions from the tax, and such exemptions as hereinbefore shown are very limited in their application.

The present law limits the application of the term "merchant" in so far as manufacturers are conconcerned, to "manufacturers who sell articles of their own production." The various amendments to the exempting provision show a decided tendency to broaden the scope of such exemptions. Contemporaneous legislation would show that the last

amendment was intended to make more effective the announced policy of the government to promote and assist the establishment of sugar centrals,—otherwise necessarily included as manufacturers under the taxing statute.

The administrative interpretations of the original and obsolete statutes should therefore find no application to the case at bar.

CONCLUSION

Considered in the light of the arguments adduced above, it is respectfully submitted that the Supreme Court of the Philippine Islands erred in holding that petitioner herein is taxable under the provisions of section 1459 of the Administrative Code of 1917 for the transactions involved in the present case. The fundamental reasons for such a decision, furthermore, did not receive the approval of the required number of justices of the Supreme Court as provided by law.

Wherefore, it is respectfully prayed that the petition for a writ of certiorari be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 325.

PAMPANGA SUGAR MILLS, *Petitioner*,

vs.

WENCESLAO TRINIDAD, as Collector, *Respondent*.

BRIEF FOR PETITIONER.

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PAMPANGA SUGAR MILLS, *Petitioner*,

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Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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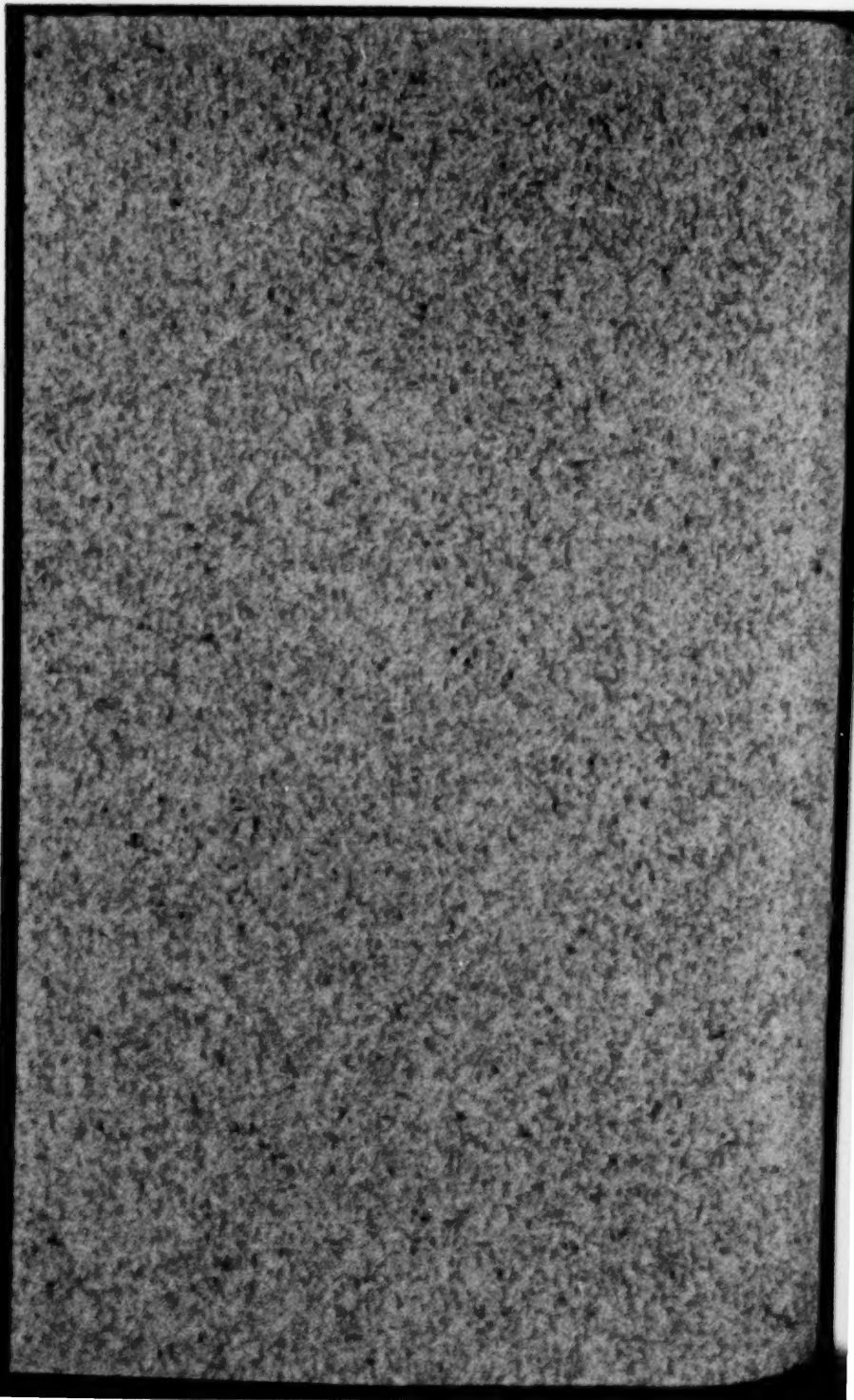

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Supreme Court of the United States

OCTOBER TERM, 1928.

No. 325.

PAMPANGA SUGAR MILLS, *Petitioner,*

vs.

WENCESLAO TRINIDAD, Collector of Internal Revenue of the Philippine Islands,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW.

The opinion ("Decision," *ante*) of the Court of First Instance of Manila, January 5, 1925 (R. 32-42, HARVEY, J.), is not officially reported. It is based upon and follows the decision of the Philippine Supreme Court in the case of *Central Azucarera de Bais* vs. *Wenceslao Trinidad*, 46 Phil. Rep. 492, pursuant to the stipulation of the parties in that court (R. 30, 39) that the issues in this case are "similar to those involved" in that case;

and, accordingly, that court sustained the tax here in question and gave judgment for the defendant-respondent against the plaintiff-petitioner.

The opinion of the Supreme Court of the Philippine Islands, affirming the judgment of the court below (R. 47-62, OSTRAND, J., with STREET, MALCOLM and ROMUALDEZ, JJ., concurring) is not yet reported either in the official Philippine reports or in the Philippine Gazette. The separate opinion of JOHNSON, J., concurring *pro hac vice* (R. 62-64) and the dissenting opinions of VILLAMOR, J. (R. 65) and of JOHNS, J. (R. 65-72, with whom concurs AVANCEÑA, C.J., R. 72) likewise are not yet officially reported.

JURISDICTION.

Jurisdiction to grant the writ exists under Section 7 of the Act of February 13, 1925, c. 229, 43 Stat. 936-940, since the amount of the tax involved, aggregating ₱60,911.42, exceeds the jurisdictional amount of $25,000.

There is no other ground of jurisdiction. No question of the construction or applicabilty of any federal statute is here presented. The case turns wholly upon the interpretation and application of local Philippine statutes to the facts before the court.

THE QUESTION.

The sole question here presented is whether the fact that the decision of the Philippine Supreme Court was by a divided court and that one member of the court, who voted with the majority to affirm the judgment of the trial court, stated that his concurrence was *"pro hac vice"* (JOHNSON, J., R. 62-64), takes this case out of the settled rule that this court will not disturb the decisions of the Philippine Supreme Court upon questions of purely local law.

STATUTES INVOLVED.

The Revised Administrative Code of the Philippine Islands of 1917, Act No. 2711, approved March 10, 1917, under "Article

II—Supreme Court" of "Title IV—Judicial Power", contains the provision:

> Sec. 138. *Sessions of court in banc and in divisions.*—The Supreme Court shall, as a body sit in banc, * * *.
>
> Six of the judges of the Supreme Court, lawfully convened, shall be necessary to form a quorum * * * for the final disposition of a civil case in which the amount in controversy exceeds ten thousand pesos * * *, and the concurrence of five judges shall be necessary for the pronouncement of a judgment, but when there is a vacancy in said court five judges shall constitute such quorum, and the concurrence of four shall suffice for the pronouncement of the judgment. * * *.

Section 1459 of the same Revised Administrative Code, under the heading "Article V—Privilege Taxes", part of Chapter 40 of Title VII, provides:

> Sec. 1459. *Percentage tax on merchants' sales.*—All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, * * *.
>
> "Merchant", as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production. * * *.

STATEMENT OF THE CASE.

This was a suit begun by the plaintiff-petitioner, Pampanga Sugar Mills, in the Court of First Instance of Manila, for the refund of one per centum "percentage taxes" paid by it under protest under Section 1459 of the Philippine Administrative Code, *supra*, aggregating ₱60,911.42. Plaintiff-petitioner operates a merchant sugar mill; it does not grow any sugar cane itself; but it mills cane brought to it by various growers, and shares the resulting sugar, or its proceeds, with the growers,—50% to the mill, and 50% to the growers (Stipulation of Facts, Par. III, R. 25).

The case was begun in the Court of First Instance on September 14, 1922 (R. 1), but a stipulation was filed in that court on November 7, 1924 (R. 30) whereby the parties agreed that

> **"the issues presented in this case being similar to those involved in the case now pending decision before the Supreme Court of the Philippine Islands, entitled Central Azucarera de Bais v. Wenceslao Trinidad, R. G. No. 21490, and the said case having been submitted already for decision, decision of this case be held in abeyance until after the decision of the Supreme Court in the above-mentioned case has been promulgated."**

Ten days later, on November 17, 1924, the Philippine Supreme Court decided the *Central Azucarera de Bais* case in favor of the Collector, holding that the "Central" was a merchant within the meaning of the definition of a "merchant" contained in Section 1459 of the Administrative Code, *supra*, and was subject to the tax prescribed by that section. *Central Azucarera de Bais vs. Trinidad*, No. 21490, 46 Phil. Rep. 492. Thereafter, on January 5, 1925, in accordance with that decision of the Insular Supreme Court, the Court of First Instance entered its "decision" in the present case (R. 32-42) in favor of the respondent-collector, *expressly basing its decision* (R. 39-40) *in part upon the fact that the parties to this case had stipulated that the issues herein involved are similar to those* determined by the Insular Supreme Court *in the Central Azucarera de Bais case*. That stipulation of the similarity of the issues involved in the two cases was never withdrawn or modified either in the trial court or in the Insular Supreme Court. Neither the plaintiff-petitioner's motion for new trial in the trial court (R. 42-43), nor its assignment of errors in the Insular Supreme Court (R. 44-45), questions the correctness of the action of the trial court in accepting the stipulation of the parties as to the absolute similarity of the issues in the two cases. Upon the record, the appeal of this case to the Insular Supreme Court was simply and plainly an attempt to induce that court to depart from its decision in the *Central Azucarera de Bais* case, which had been decided by a divided court, three of the justices, VILLAMOR and JOHNSON, JJ.,

and AVANCEÑA, C.J., having dissented. *Central Azucarera de Bais* v. *Trinidad, supra*, 46 Phil. Rep. 492, 501-502.

Upon the appeal of the present case it developed that a division of opinion still existed among the justices of the Insular Supreme Court, but after quite a long delay the present case was finally decided by that court in accordance with its decision in the *Central Azucarera de Bais* case, three of the justices, however, dissenting (VILLAMOR and JOHNS, JJ., and AVANCEÑA, C. J.; R. 65-72), and JUSTICE JOHNSON announcing that he concurred only "*pro hac vice*" (R. 62-64). The court's opinion (R. 47-62), written by MR. JUSTICE OSTRAND, was concurred in by JUSTICES STREET, MALCOLM, and ROMUALDEZ;—that is to say, four justices concurred in the prevailing opinion of the court, one justice concurred *pro hac vice*, and three dissented.

Petitioner's Contention.

Petitioner now contends that inasmuch as, under Section 138 of the Philippine Administrative Code (*ante*, p. 3), in a case like this where the amount in controversy exceeds ten thousand pesos, "the concurrence of five judges shall be necessary for the pronouncement of a judgment" of the Philippine Supreme Court; and since only four of the judges concurred in the opinion of that court, the fifth, while concurring in the judgment, expressly stating that he did so only "*pro hac vice*"; therefore this court should not consider the result as a real judgment of the Philippine Supreme Court within the meaning of the rule, which petitioner expressly admits would ordinarily be applied in such a case as this, that this court will not disturb the decisions of the territorial supreme court upon questions of purely local law,—petitioner conceding that no question other than of local law is here involved.

Respondent's Position.

It is the position of the respondent, on the other hand, that the questions here involved having once been settled by the decision of the Philippine Supreme Court in the *Central Azucarera de Bais* case, *supra*, in 1924, the issues wherein, by the express stipulation of the parties, were "similar" to those in this case;

and that earlier decision having been followed by the judgment of the Philippine Supreme Court in this case, lawfully made in accordance with its local administrative code,—even though by a divided court, and even though one justice concurred in the judgment only for the sake of disposing of the case;—that there is here a decision by the Supreme Court of the Philippine Islands, arrived at in accordance with its local procedure, determining a question wholly of local law, and therefore within the settled rule of this court that it will not, on a question of local law or of the interpretation of a local statute, disturb the judgment of the Supreme Court of the Philippine Islands. And that the rule is particularly applicable here, since this case is merely an attempt to re-litigate the same local questions settled, in 1924, by the former decision of the Insular Supreme Court in the *Central Azucarera de Bais* case.

ARGUMENT.

Petitioner expressly admits (Petitioner's brief, p. 18) that

> "ordinarily a final judgment by the local Supreme Court on the interpretation of a local tax statute would not be disturbed by this Honorable Court";

but it contends (Petition, pp. 5-6; Petitioner's brief, pp. 17-18) that inasmuch as Mr. Justice Johnson's opinion "shows that he dissents entirely from the fundamental doctrine underlying the opinion of the majority" (Petitioner's brief, p. 17), therefore the rule is not applicable in this case.

The petitioner's contention overlooks the facts that (1) the Insular Supreme Court's interpretation of Section 138 of the Philippine Administrative Code, determining the number of justices of that court "necessary for the pronouncement of a judgment" is as much a determination of a question of local law,—of the interpretation of a local procedural statute,—as is any other determination that it may make interpreting or applying any other local statute of the Philippine Islands; and (2) that its decision in the present case was simply an adherence to

its prior decision in the *Central Azucarera de Bais* case in which it is not questioned that the requisite number of justices concurred (*Central Azucarera de Bais* v. *Trinidad, supra,* 46 Phil. Rep. 492); and in which, by the express stipulation of the parties in this case in the trial court (R. 30), and the express finding of that court upon that stipulation (R. 39-40,—never objected to as to this point by either of the parties either in the trial court or in the Insular Supreme Court), the issues there involved were "similar to those involved" in the present case.

The decision of which petitioner here complains is therefore in reality the decision of the Insular Supreme Court in the earlier case,—admittedly purely upon a question of local law, and fully within the admittedly settled rule that this court will not ordinarily disturb the determination of the territorial supreme court upon such questions.

And it is manifest that the procedure of the Insular Supreme Court in the present case, by which it arrived at a judgment adhering to its former decision of the tax questions here involved, is also a decision of that court upon a question of local law; viz., of the interpretation of the local procedural statute, Section 138 of the Administrative Code, directing the procedure of the Philippine Supreme Court in arriving at its decisions.

That court, in arriving at this judgment, was compelled to construe and apply that statute. This court has repeatedly said that it does not disturb the judgments of the Supreme Court of the Philippine Islands upon questions of local procedural law, any more than upon other questions of local law. *Alzua* v. *Johnson,* 231 U. S. 106, 110; *Ibanez* v. *Hong Kong, etc., B'k'g Corp.,* 246 U. S. 621, 627; *Flemister* v. *United States,* 207 U. S. 372, 375; *Dowdell* v. *United States,* 221 U. S. 325, 327-329.

It follows that no reason exists why the same rule should not be applied to this case as to any other tax involving purely the interpretation of local Philippine tax statutes, that, as it is stated by petitioner's counsel themselves (Petitioner's brief, *supra,* p. 18), "ordinarily a final judgment by the local Supreme Court on the interpretation of a local tax statute would not be disturbed by this Honorable Court."

But in any event, the decision of the Supreme Court of the Philippine Islands, that this petitioner sugar company is a "manufacturer", and therefore a "merchant" within the meaning of Section 1459 of the Philippine Administrative Code, is right,—or, at least, is surely not "clearly erroneous."

This court has held that "In the case of sugar a process of strict manufacture is also involved in converting the cane into its final product." *Allen* v. *Smith*, 173 U. S. 389, 399; relied upon by the Philippine Supreme Court both in its opinion in this case (R. 55-57, 61), and also in its former decision, *Central Azucarera de Bais* v. *Trinidad*, *supra*, 46 Phil. Rep. 492, 498. *Confer*, also *Tidewater Oil Co.* v. *United States*, 171 U. S. 210, 216.

CONCLUSION.

Petitioner here presents no sufficient reason for the exercise of the extraordinary jurisdiction of this court by certiorari; no federal question is involved; nothing except the interpretation and application to particular facts of local Philippine tax statutes. This case is simply an attempt to re-litigate in this court local questions that were settled by the judgment of the Supreme Court of the Philippine Islands in the *Central Azucarera de Bais* case in 1924. The writ of certiorari should be denied.

Respectfully submitted,

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IN THE

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No. 325.

PAMPANGA SUGAR MILLS, *Petitioner*,

vs.

WENCESLAO TRINIDAD, as Collector, *Respondent*.

BRIEF FOR PETITIONER.

This case is here on a writ of certiorari granted by this Court to review a judgment of the Supreme Court of the Philippine Islands, rendered February 13, 1928, affirming a judgment of the Court of First Instance of Manila.

OPINION OF THE COURT BELOW.

The official report of the opinion of the Supreme Court of the Philippine Islands has not yet appeared

in the Philippine reports. The opinion of the Court, together with the concurring and dissenting opinions, appear in the record at page 47, et. seq.

JURISDICTION.

The amount in controversy exceeds $25,000 and, therefore, this Court has jurisdiction under the provisions of Section 7 of the Act of Congress of February 13, 1925, 43 Stat. 940.

STATEMENT OF THE CASE.

Petitioner is now and was during the years 1920, 1921 and 1922 the owner and operator of a sugar mill at Del Carmen, Province of Pampanga, Philippine Islands. During those years, respondent, as Collector of Internal Revenue of the Islands, levied a tax of one per cent on the sales value of certain sugar produced at said mill and sold by petitioner. In order to avoid penalties, petitioner paid the tax under protest, amounting to 60,911.42 pesos. The law of the Islands under which the tax was levied and collected is found in Sections 1459 and 1460 of Act No. 2711 of the Philippine Legislature, known as the Administrative Code of 1917. The pertinent provisions of these two sections are as follows:

> "Sec. 1459. *Percentage tax on merchants' sales.* —All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value of the things

Note: Italics ours wherever used in this brief.

in question at the time they are disposed of or consigned, whether consisting of raw material or of manufactured or partially manufactured products, and whether of domestic or foreign origin. The tax upon things consigned abroad shall be refunded upon satisfactory proof of the return thereof to the Philippine Islands unsold.

• • • • • • •

"'Merchant,' as here used, means a person engaged in the sale, barter or exchange of personal property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

"Sec. 1460. *Sales not subject to merchants' tax.*—In computing the tax above imposed transactions in the following commodities shall be excluded:

"(a) Things subject to a specific tax.

"(b) Agricultural products when sold by the producer or owner of the land where grown, or by any other person other than a merchant or commission merchant, whether in their original state, or not."

After the payment of the tax so made under protest, petitioner demanded return of the money paid and upon refusal brought this action to recover the amount. The Court of First Instance denied petitioner relief and entered judgment for respondent. That judgment on appeal was affirmed by the Supreme Court of the Philippine Islands. It is to be noted, however, that the case was under consideration by the Supreme Court for a period of three years and

during that period was orally argued to the Court twice, and was submitted to the Court three separate times. The Court was unable to reach a decision after the two oral arguments, eight of the Justices being divided four to four and the ninth Justice being disqualified. After the third argument, the Court was still unable to decide the case, the eight Justices still being equally divided. Thereupon one of the Justices, who had been consistently voting as one of the four who were of opinion that the tax had been illegally levied and should be recovered, changed his vote and voted with the four Justices who thought the tax had been legally collected. At the same time he wrote an opinion in which he stated that he still adhered to his original belief that the levy of the tax was illegal and gave his reasons therefor. But he said that he would change his vote for the sole purpose of breaking the deadlock and allowing the company to ask that the case be reviewed by the Supreme Court of the United States (R. 62-64). He did change his vote and thus the judgment of the lower Court was affirmed. It is this judgment reached by the Court below in this unusual manner which is now under review.

FACTS.

The case in both lower Courts was submitted upon an Agreed Statement of Facts, set forth in the record at pages 24-29. This agreed statement establishes the following facts:

(1) Petitioner is a corporation duly organized and existing under the laws of the Philippine Islands and is and was at all material times the owner and operator of a sugar mill at Del Carmen, Pampanga, Philippine Islands, there engaged in the production of raw centrifugal sugar. (R. 24, 25.)

(2) Respondent was at all material times the Collector of Internal Revenue of the Philippine Islands. (R. 24.)

(3) In the operation of its mill, petitioner mills sugar cane grown on lands other than those belonging to petitioner. Said sugar cane is delivered to petitioner by the owners thereof under contracts called "milling contracts." These contracts provide that petitioner shall mill the cane and *receive as compensation for its services in milling said cane,* one-half of the resulting centrifugal sugar, the owners of the cane receiving the other half of said sugar. (R. 25.)

(4) During the third and fourth quarters of 1920, all of 1921 and the first and second quarters of 1922, petitioner received as its one-half of the sugar so produced under the foregoing contracts, raw centrifugal sugar which upon being sold had a sales value of 6,091,142 pesos (R. 26, 28).

(5) Respondent, as Collector of Internal Revenue of the Islands, claiming to act under the authority of Section 1459 of Act 2711, above set forth, levied and assessed against plaintiff a tax of one per cent of the sales value of said raw sugar so received by petitioner. Petitioner, in order to avoid penalties, paid this tax under protest to respondent, the amount of the payment being 60,911.42 pesos. (R. 28.)

(6) Petitioner had, prior to the payment of said tax, duly filed its protest that the taxes were illegal and that the said sales of sugar made by petitioner were particularly exempted from said tax by the terms of Section 1460 of the said Act 2711. After the payment of said tax, petitioner duly demanded the return thereof, which demand was refused. Thereupon peti-

tioner commenced this action against respondent, as Collector, to recover the amount of said payments (R. 28).

THE QUESTIONS INVOLVED.

There are two questions involved in this controversy:

First. Does the tax provided by Section 1459 of Act 2711 apply to such sales as were made by petitioner of the sugar received by it under the facts above set forth?

Second. If Section 1459 does apply to such sales, are such sales exempt from said tax by the provisions of Section 1460 of said Act?

Specifications of Error Relied Upon by Petitioner.

Petitioner relies upon errors of fact and of law committed by the lower Court as follows:

1. The Court erred in holding that the tax applied to all manufacturers who sell their output as an incident to their business, whereas the Court should have held that the tax applied to only those manufacturers who engage as merchants in the business of selling articles of their own production.

2. The Court erred in holding that petitioner, in making the sales of sugar in question, was a manufacturer who sold articles of its own production.

3. The Court erred in holding that petitioner was the producer of the sugar sold by it.

4. The Court erred in holding that the sales of sugar by petitioner were not exempt from the tax under the provisions of Section 1460 of Act No. 2711 of the Philippine Legislature.

SUMMARY OF ARGUMENT.

1. The tax is a tax on sales by merchants, as distinguished from sales by others not engaged in selling as merchants.

2. The term, "merchant," as used in Section 1459 does not include all manufacturers, but only such manufacturers as are engaged as merchants in the business of selling goods of their own production.

3. The petitioner was merely hired by the growers of the cane to mill the cane and extract the sugar therefrom. For its services in this respect, it received fifty per cent of the resulting sugar. Under these circumstances, petitioner was not the producer of the sugar any more than it would have been such producer had it been hired by the growers to mill the cane for a cash consideration.

4. Even if it be held that petitioner was the producer of the sugar and sold the same as a merchant, and that the sales of the sugar by petitioner thus come within the provisions of Section 1459, still raw centrifugal sugar is an agricultural product and Section 1460 particularly exempts from the tax sales of agricultural products when such sales are made by the producer.

5. Sales of agricultural products under Section 1460 are also exempt if made by any person other than a merchant or commission merchant. The term, "merchant," in this section cannot include petitioner, even if petitioner be included within the meaning of the word, "merchant," under Section 1459.

6. Statutes providing special taxes are to be construed most strongly against the Government and in favor of the tax payer. All doubts are to be resolved against the Government.

7. All exemptions from special taxes are to be given a liberal construction in favor of the person claiming exemption.

8. If this tax were properly levied against petitioner, then petitioner will be subject to a double tax for the same operation, one under section 1459 and one under section 1462.

9. While under ordinary circumstances this Court will follow the interpretation of a local statute made by the Supreme Court of the Islands, nevertheless the decision in this case cannot be held to be such an interpretation. For three years, the Philippine Supreme Court was evenly divided, and finally one of the Justices changed his vote solely for the purpose of breaking the deadlock and having the case determined by this Court. Moreover, it is not necessary to interfere with any part of the decision interpreting the statute in order to reverse it. The decision of the Philippine Court is based upon one fundamental conclusion, that is, that the petitioner was the producer of the sugar. This conclusion has nothing to do with interpreting a statute. If this conclusion be wrong, then the judgment must be reversed because it is only the producer that comes within the purview of the tax. The Azucarera case, which is claimed as another interpretation of this statute, was based upon the conclusion of the Court that the sugar mill in that case was the purchaser of the sugar cane. Again, this is not an interpretation of the statute but an interpretation of a contract. Also in the Azucarera case the Court was evenly divided, four Justices voting for a reconsideration and four voting against such reconsideration.

ARGUMENT.

I.

The Tax Is a Tax Upon Sales by Merchants.

That the tax provided is a tax upon sales by merchants is evidenced by the wording of the Act. The heading of Section 1459 is as follows:

> *"Percentage Tax on Merchants' Sales."*

Thus the very heading or title of the section indicates that it provides a tax upon sales by merchants only.

The section then begins as follows:

> "All *merchants* not herein specifically exempted shall pay a tax of one per centum on the gross value in money of commodities, goods, wares and merchandise sold, bartered, exchanged or consigned abroad by them."

The word, "merchant," is then defined as follows:

> "Merchant, as here used, means a person *engaged* in the sale, barter or exchange of personal property of whatever character."

The word, "engaged," is defined as follows by the Standard Dictionary:

> "To busy oneself; to be occupied or devoted; take part, as to engage in trade."

It seems clear that the tax is a tax upon sales by *merchants*, as distinguished from sales by persons not *"engaged"* in the business of buying and selling goods. Obviously, it would not include a casual sale

of some item of personal property made by a man not "engaged" in buying and selling. For example, the tax would not apply to a sale made by a doctor of his old automobile, because such doctor is not, in the words of the statute, "*engaged*" in selling personal property.

The Supreme Court of the Islands has interpreted this Act in precisely the same way. In the case of Central Azucarera v Trinidad, 46 Phil. 492, the Court used the following language concerning this very tax:

> "The tax we are considering is a tax on certain transactions which are made taxable when carried out by merchants as distinguished from persons who do not *devote* themselves to commercial operations."

So we must conclude that the tax is a tax upon sales by merchants, not a tax upon incidental or casual sales made by others not engaged as merchants.

II.

The Term, "Merchant," as Used in the Act Does Not Include All Manufacturers But Only Such Manufacturers as Are Engaged as Merchants in Selling Goods of Their Own Production.

The Act provides that manufacturers who sell articles of their own production shall be included in the term "merchant," and thus become subject to the tax. The clause in the Act concerning manufacturers is as follows:

> "Merchant, as here used, means a person engaged in the sale, barter, or exchange of personal

> property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production and commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected, but does not include merchandise brokers."

The term, "merchant," in its ordinary sense means a person who is engaged in the business of buying and selling merchandise. Some merchants, instead of buying all their merchandise, manufacture a portion of the articles they sell. In order to make it perfectly clear that manufacturers who engage as merchants in selling articles of their own production would be subject to the tax, the clause above-quoted with regard to manufacturers was included. This in no manner qualifies the previous definition that a merchant is one who is "*engaged*" in the business of selling. The clause covering manufacturers when read in connection with the previous clause, means that only those manufacturers who *engage* in selling articles of their own production as a business are subject to the tax.

All manufacturers must, of course, sell their product. Otherwise, they could not continue to manufacture. But the ordinary manufacturer is not *engaged* in the business of selling. His selling is a mere incident to his business of manufacturing.

As the court said in *Re Rheinstrom & Sons Co.*, 207 Fed. 119, in speaking of a manufacturer:

> "Ordinarily, at least, he must be a seller, for in the very nature of things he cannot keep making things. It is essential for him to sell the things which he makes in order to keep going."

In the case of *People ex rel Tiffany v. Campbell*, 144 N. Y. 166, the Court said:

> "Without the power of sale, the business of production could not be carried on. The power to sell is an indispensable adjunct to a manufacturing business."

In the note to *21 Ann. Cas. 78*, it is said:

> "Every manufacturer must sell his wares; but he is not for that reason to be classed as a dealer in such goods."

In the case of *Phillips v. Byers*, 189 Cal. 665, the Court said at page 671 of the opinion:

> "It follows that one who simply manufactures an article and sells it is not a merchant and that although a manufacturer may also be a merchant if he buys and sells goods, he does not become one by disposing of the goods he has produced, at a manufacturer's profit."

See also *Chattanooga Plow Co. v. Hays*, 125 Tenn. 148. *Ong Chew Lung v. Burnett*, 232 Fed. 853.

Assume that a manufacturer of railroad cars, at the beginning of a year, sells his entire output for the year to a single purchaser. Such manufacturer cannot be said to be a merchant, nor can he be said to be engaged in the sale of cars. He is engaged in the business of manufacturing cars, and the selling of those cars is a mere incident to his business of manufacturing.

In its opinion the Supreme Court of the Philippines says that petitioner produced the sugar, and sold it, and that makes the sales by petitioner subject to the

tax. But such a holding would include all manufacturers, because all manufacturers produce something and sell the product. Had it been the intention to include all manufacturers in the tax, it would have been a simple matter to have merely said that the term, "merchant," includes all manufacturers. But the Act does not say so. It says the term, "merchant," includes "*manufacturers who sell articles of their own production,*" and by the context we have shown this to mean such manufacturers as "engage," as merchants, in the business of selling their own products.

That the tax provided is one on sales by those engaged in the business of selling is further evidenced by the clause which includes commission merchants in the term, "merchant." The pertinent provisions of this clause are as follows:

> "Commission merchants having establishments of their own for the keeping and disposal of goods of which sales or exchanges are effected."

So that a commission merchant, even though he might not be a merchant in the ordinary sense, because he does not buy his goods but sells the goods of others on commission, still under this section, if he has an establishment where he keeps these goods on display and engages in selling them, becomes a merchant within the meaning of the Act and his sales so made are subject to the tax. The very next clause of the Act exempts merchandise brokers who merely take orders and do not have on hand the goods they sell.

So that the whole import of the Act seems to be to levy a tax on sales made by merchants, or if not by merchants in the technical sense, then by persons en-

gaged in the business of selling in the same manner as merchants are engaged in the business of selling. As the Act itself so imports, and as the Supreme Court of the Islands held in the Azucarera case, 46 Phil. 492, *supra*, that the tax was a tax on sales "*by merchants as distinguished from persons who do not devote themselves to commercial operations,*" it would seem that a manufacturer, who is not engaged in the business of selling his products as a merchant but merely sells his output as an incident to his business of manufacturing, would not come within the purview of the statute.

III.

Under the Milling Contracts Between Petitioner and the Growers of the Cane the Sugar Is Not Produced in a Legal Sense by the Petitioner. Therefore, Petitioner Is Not a Manufacturer Who Sells Articles of Its Own Production and Thus Is Not Subject to the Tax.

The sugar, sold by petitioner and upon which sale it paid the tax in controversy, was produced at the mill of petitioner under contracts with the owners of the cane. These contracts provided that petitioner should mill the cane and

> "as compensation for its services in milling said cane plaintiff (petitioner) receives 50 per cent of the resulting centrifugal sugar and the sugar cane growers receive the remaining 50 per cent of the resulting centrifugal sugar." (R. 25.)

It is to be observed that petitioner did not grow the cane; it did not purchase the cane; at no time did it

ever become the owner of the cane. It simply milled cane belonging to others and, as compensation for what it did, received one-half of the resulting sugar. Such a transaction is not a purchase by petitioner of the sugar cane; it is a bailment. It was only by way of compensation for services rendered that any property in the manufactured product of raw sugar passed to the sugar mills, and this was only after the conversion had been complete and in lieu of a money payment.

There has been no tax levied against the sales by the cane growers of their one-half of the sugar. (R. 59.) Obviously under the exemption of Section 1460 (b) no tax could be levied on such sales. So that had the growers paid petitioner for its services in milling the cane in money, and had all the sugar been sold by the growers, no sales of any portion of this sugar would have been taxed. What legislative intent, then, can be presumed that would place this burden on the miller's half of the sugar when the miller is only changing into money his payment for services performed for the grower? The most fundamental economic reasoning shows that the burden of this tax would eventually fall back on the grower of the agricultural product, the very person the Act was aimed to protect.

The policy of the legislature to protect agricultural products was enunciated in Section 1460 (b). A construction of this section that will permit a tax on even the miller's one-half of the agricultural product would to that extent defeat the legislative intent of rendering protection to this initial stage in the sugar's economic progression.

Petitioner not the producer of the sugar.

The Supreme Court of the Philippines held that under this contract between petitioner and the grower of the cane that the petitioner was the producer of the sugar. The whole decision of the Court is based upon this one conclusion. But if this conclusion be wrong and petitioner be not the producer, then the tax was illegally levied because it is only such manufacturers as sell articles of their own production that are subject to the tax.

Undoubtedly, if petitioner had grown the cane and then extracted the sugar, it would be the producer of the sugar. Doubtless if it purchased the cane and then extracted the sugar, it would be the producer of the sugar. But petitioner neither grew the cane nor purchased it; it merely contracted, for a compensation, to mill cane belonging to others.

The reason why petitioner's compensation in this case is not fixed in terms of money, but instead is fixed at a certain portion of the product, is obvious. The sugar central cannot operate without sugar cane; on the other hand, the planters cannot have the sugar without the central. One must necessarily depend upon the other. A loss on the part of the planters will necessarily be reflected in the operation of the central by a reduction of its cane supply. If the parties fix the compensation of the central in terms of money, this will necessarily be in an amount to afford the central a proper margin of profit. If the prices of sugar should be low, there may be a time when the central would make money while the planter would be losing. Each party being in a way dependent upon the other, a cooperative arrangement had to be arrived at. Such an arrangement could only be made

in such a way that both parties must bear the risk of a fluctuation in prices. It could have been a certain portion of the sales proceeds of the product, but in that case the question as to who should have the last say in the sale of the sugar would complicate matters, and in most instances create friction between the parties. For these reasons petitioner's compensation was fixed in a certain portion of the resulting sugar.

As we have seen, the transaction between the grower of the cane and the mill owner is a bailment. The grower retains the title to the cane at all stages. He also retains his title to the sugar in the cane, at least to the point where the sugar is actually separated and becomes a separate entity. If we concede that at that point the title to one-half the sugar vests in the mill owner, it is only because he has earned that half for completing the contract pro tanto.

If the mill owner failed to complete what he had contracted to do; if, for example, he crushed the cane but failed to put it through the centrifugal cylinders which finally extract the sugar, he would neither have earned nor received title to any part of the sugar or of the cane. He had agreed to mill the cane, i. e., to crush the cane and extract the sugar. Until he had completed his contract as to some portion of the cane, no compensation was due him, and he could not claim title to any portion of the material on which he was working. After the contract is completed and the sugar produced, the mill owner receives one-half the sugar produced as his compensation. Admitting for the argument that he receives the title to his half as rapidly as produced, still, after all, he is in the same position as any man who has been hired with his tools to do a certain job for compensation.

Assume that the plantation owner, the grower of the cane, had a sugar mill of his own on his plantation, and there milled the cane he had grown. Under such circumstances the grower would, undoubtedly, be the producer of the sugar. Is the grower any the less the producer if he employs some one else to mill his cane? If a farmer hires one man to plant his corn, another to harvest it, and still a third to grind it into meal, is not the farmer the producer of the meal?

Under the circumstances of this case, where the grower not only grew the cane but hired the mill owner to crush it and extract the sugar, it seems reasonably clear that the man who *produced* the sugar was the man who grew the cane and hired it milled. If this conclusion be found correct, then the tax in this case was illegally collected because petitioner, in selling its half of the sugar, was not selling articles of its own production.

But if it be held that petitioner was the producer of the sugar, then Section 1460 of the Act specifically exempts sales of such sugar from the tax.

IV.

If Notwithstanding the Foregoing Argument It Be Held That Petitioner Is a Merchant and the Producer of the Sugar, Still Raw Centrifugal Sugar Is an Agricultural Product and the Sales by Petitioner of This Agricultural Product are Exempt From the Tax Under the Provision of Section 1460.

We have heretofore attempted to establish three propositions:

> *1st.* That the tax is a tax on sales by merchants, not a tax on sales when made by others than merchants;

2nd. That only such manufacturers as *engage* in selling their own products *as merchants* come within the purview of the tax;

3rd. That the sugar was not produced by petitioner so that by the express terms of the statute, the tax does not apply to the sales by petitioner.

But if it be held that any manufacturer who sells his own product, not as a merchant but merely as an incident to his business of manufacturing, is subject to the tax, and also that under the peculiar circumstances of this case, the petitioner was the producer of the sugar, then we think it clear that the sales under discussion of raw, centrifugal sugar by the producer of that sugar are exempt from the tax by the express provision of Section 1460 of the Act. Section 1460 is as follows:

> "*Sales Not Subject to Merchants' Tax.*—In computing the tax above imposed, transactions in the following commodities shall be excluded; (a) Things subject to a specific tax; (b) Agricultural products when sold by the producer or owner of the land where grown, or by any other person other than a merchant or commission merchant, whether in their original state or not."

It will thus be seen that sales of agricultural products when sold by the producer or owner of the land where grown or by any person other than a merchant or commission merchant are exempt from the tax, and even if sold by a merchant or commission merchant, still if that merchant or commission merchant happens to be the producer of the agricultural product, or the owner of the land where the agricultural product is grown, then such sale is likewise exempt. The only

sales of agricultural products that are not exempt are sales by a merchant or commission merchant who is not the producer of the product nor the owner of the land where the product was grown. All other sales of agricultural products are, by the express terms of the statute, exempt.

Raw centrifugal sugar is an agricultural product.

While the term "agricultural products" in a limited sense means only such products as are the direct result of the culture of the soil in their natural condition without having gone through any manufacturing process, still in a broader sense the term includes products which have gone through some process of manufacture in order to make such products suitable for use. Butter is in a sense manufactured, still it is considered an agricultural product. Raisins have gone through some process of manufacture, but nevertheless are an agricultural product.

Webster's International Dictionary, after other definitions of agriculture, says:

> "In a broader sense the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use. In this broad use it includes farming, horticulture and forestry, together with such subjects as butter and cheese making, sugar making, etc."

The original form of the agricultural product containing the sugar is the sugar cane which the land produces. The sugar exists in the cane before milling. The milling does nothing but separate the sugar from the juice and from the fibrous material constituting

the bulk of the cane. The cane is first crushed and by this process the juice of the cane containing the sugar is separated from the fibre. The juice after concentration is given a strong centrifugal movement which separates the crystals of sugar from the molasses.

The process of separating the sugar from the molasses is very similar to the process of separating cream from milk. The same centrifugal movement is used in the one process as in the other. In the creamery, the milk is given a rapid centrifugal movement which throws the heavy part of the milk to the outside, leaving the lighter part in the center. The cream, being lighter, remains in the center, the remainder of the milk going to the outside. The cream has merely been separated from the milk, exactly as the sugar has been separated from the molasses.

The terms of the Act itself indicate that such products as sugar that have gone through some manufacturing process are included in the exemptions. It is to be noted that sales of agricultural products are exempt by the express words of the statute,

"Whether in their original state or not."

It is true that the raw centrifugal sugar is not in the same state as when it first comes from the plantation. The process of separating the sugar from the cane has been employed. So that, doubtless, the legislature, in exempting argicultural products, "whether in their original state or not," must have particularly had in mind such products as sugar which cannot be ordinarily marketed without some mechanical operation to place them in marketable form.

Sales by petitioner of this raw sugar are expressly exempted from the tax.

The statute exempts from the tax sales of agricultural products in the following words:

> "Agricultural products when sold by the producer or owner of the land where grown, or by any other person than a merchant or commission merchant."

Sales of agricultural products are thus exempt from the tax in three specified instances:

(1) If made by the producer;
(2) If made by the owner of the land where the agricultural product is grown;
(3) If made by any other person than a merchant or commission merchant.

We have already seen that unless petitioner is the producer of the sugar there is no tax upon the controverted sales, because the tax only applies to manufacturers "who sell articles of their own production." So that unless it be held that petitioner is the producer of the sugar, there is no tax. But if petitioner be the producer of the sugar, then the sales of this sugar are exempt from the tax by the express provisions of Section 1460.

The Supreme Court of the Islands held directly that petitioner was the producer of the sugar. Indeed, it was compelled to so hold in order to justify its decision that the levy of the tax was valid, because it is only manufacturers who sell articles which they produce who are included within the statute. But during the entire course of its rather lengthy opinion, the court, while referring to the exemptions under Section 1460

and quoting the provisions of the section, never considered or discussed in any manner whether the sales by petitioner were exempt under that section.

One may take either horn of the dilemma and the result is the same. Unless petitioner is the producer of the sugar, the sales do not come within the purview of the tax under Section 1459, and if petitioner be the producer, then sales of this agricultural product by the producer are exempt from the tax under the provisions of Section 1460. Petitioner is either the producer of the sugar or it is not the producer. Either way, there is no tax.

Sales by petitioner also exempt because petitioner is neither a merchant nor commission merchant within meaning of Section 1460.

The sales by petitioner are also exempt because all sales of agricultural products are exempt unless made by a merchant or commission merchant. The words of exemption in the statute are:

> "Agricultural products when sold by * * * any other person other than a merchant or commission merchant."

As there can be no contention that petitioner is a "commission merchant," it follows that unless petitioner is a "merchant" within the meaning of this section that there can be no tax, for in that event the sale would have been made by some person, "*other than a merchant or commission merchant.*"

Petitioner not a merchant within meaning of Section 1460.

Petitioner is, of course, not a merchant in the ordinary sense of that word. So unless the word "merchant" as used in Section 1460 has the same special meaning as it has in Section 1459, that is, unless the word "merchant" as used in section 1460 also includes manufacturers, then the sales by petitioner are exempt by the express words of the statute. The word "merchant" as used in Section 1459 includes "manufacturers who sell articles of their own production." This is true solely because the section says so.

We call attention to the wording of Section 1459. It says:

> "'Merchant' as *here* used means • • • it includes manufacturers who sell articles of their own production."

The word "here" must mean the particular section. It cannot mean wherever used in the more than a thousand sections comprising the Act. It might mean wherever used in connection with the tax being covered but the wording of the next section indicates that the definition of the word, "merchant," as found in Section 1459, applies only to that section.

Section 1459 also says that the word "merchant" includes "*manufacturers • • • and commission merchants.*" Section 1460 says sales of agricultural products are exempt when sold by any one not a "*merchant or commission merchant.*" The word "merchant" in Section 1459 includes commission merchants. The word "merchant" in Section 1460 cannot include commission merchants because the section says that sales

of agricultural products are exempt when made by any one "not a 'merchant' or commission merchant." If the word "merchant" includes commission merchants then the added words, "or commission merchant," are entirely useless. It is against the plainest rules of statutory construction to attach no meaning to these words. The rule is that no words are to be considered superfluous but that all words used should be given a meaning not inconsistent with the rest of the language. If the word "merchant" be used in the exemption clause of Section 1460 in its ordinary sense, then the added words "or commission merchant" have a plain and obvious meaning. It seems clear, therefore, that the word "merchant" as used in Section 1460 does not include manufacturers and commission merchants, but is used in its usual and ordinary sense. The Legislature apparently intended to exempt sales of agricultural products when made by any one "not a merchant or commission merchant" in the ordinary meaning of those words.

That all words of a statute are to be given a meaning and that none are to be regarded as superfluous, see the following cases:

Lawrence v. Allen, 7 How. 785, 793 of opinion.
Bend v. Hoyt, 13 Pet. 263.
Wilmot v. Mudge, 163 U. S. 217—page 221 of opinion.
Montclair v. Ramsdell, 107 U. S. 147 page 152 of opinion.
Hurtardo v. California, 110 U. S. 516.

V.

Statutes Providing Special Taxes Are to Be Liberally Construed in Favor of the Taxpayer; All Doubts Are to Be Resolved Against the Government.

It is an established rule of statutory construction, applicable to all statutes providing for special taxes, that all doubts are resolved in favor of the taxpayer and against the Government.

In the case of American Net and Twine Co. v. Worthington, 141 U. S. 468, the question was whether certain import duties applied to certain articles. The Court said:

> "Were the question one of doubt, we should still feel obliged to resolve that doubt in favor of the importer, since the intent of Congress to impose a higher duty should be expressed in clear an unambiguous language."

In the case of Gould v. Gould, 245 U. S. 151, the question was whether the income tax applied to receipts of alimony. The Court said:

> "In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government, and in favor of the citizen. United States vs. Wigglesworth, 2 Story, 369; American Net and Twine Co. v. Worthington, 141 U. S. 468; Benziger v. United States, 192 U. S. 38."

In United States v. Merriam, 263 U. S. 179, the Court said:

> "In statutes levying taxes the literal meaning of the words employed is most important for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful the doubt must be resolved against the Government and in favor of the taxpayer."

All exemptions from special taxes must be given a liberal construction in favor of the person claiming exemption.

It is also an established rule of statutory construction that all exemptions from *special* taxes must be given a liberal construction in favor of the person claiming exemption. This is exactly the converse of exemptions from *general* taxes where the rule is that such exemptions must receive a strict construction.

In the case of Eidman v. Martinez, 184 U. S. 578, the question was whether a certain estate was subject to the inheritance tax. The Court said at page 583 of the opinion:

> "It is an old and familiar rule of the English Courts, applicable to all forms of taxation and particularly special taxes, that the sovereign is bound to express its intention to tax in clear and unambiguous language, and that a liberal construction be given to words of exception confining the operation of duty, (Citing cases) though the rule regarding exemptions from general laws imposing taxes may be different." (Citing Cooley on Taxation, sec. 146 and In Matter of Enston, 113 N. Y. 174.)

In Re Enston's Estate, 113 N. Y. 174, 21 N. E. 87. This case involved the construction of an inheritance tax of the State of New York. The estate claimed exemption because Mrs. Enston was not a resident of the State of New York at the time of her death. The Court said:

> "The tax imposed by this Act is not a common burden upon all the property, or upon all the people within the state. It is not a general, but a special tax, reaching only to special cases, and affecting only a special class of persons. The executors in this case do not, therefore, in any proper sense claim exemption from a general tax or a common burden. * * * If they were seeking to escape from general taxation, or to be exempted from a common burden imposed upon the people of the state generally, then the authorities cited by the learned counsel for the people, to the effect that an exemption thus claimed, must be clearly made out, would be applicable. But the executors come into court claiming that the special taxation provided for in the law of 1885 is not applicable to them, or the property which they represent. In such a case they have the right, both in reason and in justice, to claim that they shall be clearly brought within the terms of the law before they shall be subject to the burdens. It is a well established rule that a citizen cannot be subjected to special burdens without the clear warrant of the law." (Citing-Cooley on Taxation, 2nd Ed. 275; U. S. v. Wigglesworth, 2 Story 373; Powers v. Bonney, 5 Blatchf, 203; U. S. v. Watts, 1 Bond 583; Doe v. Snaith, 8 Bing. 152; Green v. Howay, 101 Mass. 248.)
>
> See also Cooley on Taxation, Fourth Edition, Sec. 673.

VI.

The Policy of the Philippine Government Has Persistently Favored Agricultural Products and Especially Sugar.

In Section 142 of Act No. 1189 of the Philippine Commission, is found the original exemption of agricultural products from the sales tax, which that Act imposed. That exemption is as follows:

> "SEC. 142. The following persons shall be exempted from the payment of the taxes imposed in section one hundred and thirty-nine:
>
> "(a) Agriculturists, on all products of their own production sold by them.
>
> • • • • • • • •
>
> "(g) Persons whose manufactures consist solely in harvesting and getting into proper condition for their own use or for sale the products of the lands owned or occupied by them, such as the cutting and drying of copra and threshing of rice."

In 1914, Act No. 2339 was passed, revising and consolidating former internal revenue laws. The corresponding provision in this Act is Section 41, which reads:

> "Sales not subject to merchants' tax.—In computing the tax above imposed transactions in the following commodities shall be excluded:
>
> "(a) Merchandise actually exported by the vendor;
>
> "(b) Things, other than opium, subject to a specific tax;

"(c) Agricultural products when sold by the producer or owner of the land where grown whether in their original state or not."

This section was later amended by Section 3 of Act No. 2541 which was passed on December 21, 1915, for the purpose, as its title states, of "changing the rates of taxes and additional taxes, creating new taxes, abolishing others, and for other purposes." Said section as amended by Act 2541, is incorporated verbatim in Section 1460 of the Administrative Code. It reads:

"SEC. 41. Sales not subject to merchant's tax. —In computing the tax above imposed, transaction in the following commodities shall be excluded:

"(a) Things subject to a specific tax;
"(b) Agricultural products when sold by the producer or owner of the land where grown, or by any other person other than a merchant or commission merchant, whether in their original state, or not."

Act No. 2541, which exempts "any other person, other than a merchant or commission merchant," dealing in agricultural products, whether in their original state or not, from the payment of the merchants' tax was passed in December of 1915. Only ten months before, to be exact, on February 5, 1915, the Philippine Legislature passed Act No. 2479 creating the Sugar Central Board. Section 2 of the Act reads:

"SEC. 2. It shall be the duty of this board to promote and aid in the establishment of sugar centrals with their machinery, equipment, rights of way, railroads, and other appurtenances for

the manufacture of sugar and industries derived therefrom in the sugar-producing provinces, if in its judgment the local conditions warrant the establishment of a sugar central."

Under this Act, the Government authorized the investment of two million pesos of the gold standard fund in bonds of such sugar centrals. The Legislature made it clear that it was the object of the Act to promote and assist the establishment of sugar centrals in the Philippine Islands.

It is thus clearly established that the policy of the Philippine Government has consistently favored agricultural products and especially sugar. This being true, it emphasizes the general rule that unless it be clear and free from doubt that this special tax applies to the sales of sugar made by petitioner, then it should be held that the tax does not apply. It also emphasizes the rule that the exemption from this special tax should receive a liberal construction in favor of the exemption. And it adds force to the general rule that all doubts are to be resolved against the Government and in favor of the taxpayer.

VII.

If Sugar Centrals Must Pay the Tax Under Section 1459, Then They Will Be Subject to Double Taxation Because They Are Expressly Made Subject to a Tax of One Per Cent Under Section 1462 of the Same Act.

Prior to March, 1923, Section 1462 of Act 2711, the Administrative Code of 1917, provided for a tax of one per cent on certain contractors, but did not by name include sugar centrals. Notwithstanding this, the Col-

lector of Internal Revenue under some circumstances had been taxing sugar centrals at one per cent of the value of their output under Section 1462, upon the theory that they were contractors under that section. The validity of this tax was called in question in the case of La Carlotta Sugar Central v. Trinidad, 43 Phil. 816. In that case the Supreme Court of the Islands held that sugar centrals were not subject to the tax under Section 1462. The decision was rendered September 26, 1922. Thereupon the Philippine Legislature in March, 1923, passed an amendment to Section 1462 which by express terms made the tax apply to sugar centrals. Section 1462, as amended in 1923, is as follows:

> "SEC. 1462. Percentage tax on road, building, irrigation, artesian well, waterworks, and other construction work contractors, proprietors or operators of dockyards, and others—Road, building, irrigation * * *, and other construction work contracts, * * * proprietors or operators of dockyards, * * * *sugar centrals*, and rice mills; persons selling light, heat or power; keepers of hotels, restaurants, cafes, or refreshment parlors; **and warehousemen, stevedores, dressmakers,** * * * shall pay a tax equivalent to one per centum of their gross receipts; * * *."

There is nothing in Section 1462, as so amended, which would exempt the business therein taxed from the payment of the taxes provided in Section 1459; nor is there a provision in the last named section which would exempt a business paying a tax thereunder from the payment of the tax provided in Section 1462, as amended. On the other hand, Section 1453 of the Administrative Code of 1917 provides, in part:

> "* * * The tax on business is payable for every separate or distinct establishment or place where business subject to the tax is conducted; and one occupation or line of business does not become exempt by being conducted with some other occupation or business for which such tax has been paid."

It is, therefore, clear that should it be decided that the transactions involved in these proceedings are taxable under Section 1459, then such transactions would eventually be subject to the payment of two taxes,—those under Section 1459 and those under Section 1462, as amended. We submit that this could not have been the intention of the Philippine Legislature. Double taxation is always contrary to good government and should not be presumed as being intended by any legislature unless such intention is clearly expressed. Especially must this be true as to agricultural products which have been consistently favored by the Philippine Legislature.

Statutes are to be construed if possible so as to avoid hardships, injustice or inequality.

It is a well established rule of law that in the construction of statutes, that construction is to be adopted wherever possible which will avoid injustice, hardship, or inequality.

In the case of United States v. Kirby, 7 Wall. 482, the Court said:

> "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence."

This extract from the opinion in United States v. Kirby was quoted with approval in Jacobsen v. Massachusetts, 197 U. S. 11.

In Knowlton v. Moore, 178 U. S. 41, the Court said on page 77 of the opinion:

> "We are, therefore, bound to give heed to the rule, that when a particular construction of a statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute."

See also Lau Ow Bew v. U. S., 144 U. S. 47.

The construction of this statute so as to make it apply to the sales of sugar made by petitioner will occasion injustice and inequality and, therefore, under the above authorities is to be avoided.

VIII.

Rule That This Court Will Follow the Decisions of the Philippine Supreme Court in Interpreting a Local Statute Has No Application to This Case.

It is contended by respondent that the Territorial Supreme Court had twice interpreted the statute covering this tax and that this Court, following its well-known rule, will follow the local Court in the interpretation of a local law. One of the interpretations claimed is in the present case. But we have already seen that the local Court was evenly divided for three years and that finally one of the Justices changed his vote for the sole purpose of breaking the deadlock and allowing the matter to be decided by this Court.

This clearly cannot be such an interpretation as to invoke the rule.

The second interpretation claimed is the case of Central Azucarera de Bais v. Trinidad, 46 Phil. 492. At the time of that decision there was a vacancy in the Court. Under the statute, Section 138 of Act No. 2711 (the Administrative Code of 1917), when there is a vacancy in the Court, the concurrence of four judges "shall suffice for the pronouncement of the judgment." Under these circumstances, the judgment was rendered with the concurrence of four judges only, three dissenting and one being absent on vacation. Thereafter upon the return of the absent Justice, a motion for reconsideration was made. Upon that motion the Court divided evenly four to four, the motion was thus denied.

We, of course, recognize the general proposition that in the interpretation of a local statute the decisions of the Supreme Court of the Philippines will be followed by this Court. Where, however, the Supreme Court of the Philippines is evenly divided, the rule ought to lose its force. The fact is that the Supreme Court of the Philippines is hopelessly divided on this question and has been from the first time this statute has been before it. We, therefore, say that the general rule has no application to this case.

Decisions relied upon are not interpretations of a statute, but interpretations of a contract and consequently rule fails.

However, if it be held that the circumstances under which these two decisions were rendered do not take them out of the general rule, still it makes no differ-

ence as the decisions themselves are not so much interpretations of the statute as interpretations of the contracts under which the sugar was produced.

It is true these two decisions do in some respects interpret the statute, but there is little controversy over such interpretation. The principal interpretation of the statute is found in the Court's ruling that the tax is a tax upon sales by merchants. With this interpretation, petitioner agrees. But petitioner can not agree with the Court's interpretation of the contracts involved.

In the Azucarera case, the Court held that under the contract in that case the sugar mill owner was the purchaser of the cane and based its decision upon that conclusion. This Court is not bound by the conclusion of the Philippine Court, that under the contract in that case the sugar mill was the purchaser of the sugar. Moreover, the decision of the Court in that case, being based upon the conclusion that the sugar mill was the purchaser of the cane, cannot be applicable to the present case where the petitioner did not purchase the cane but milled the cane for compensation.

In the present case, the Court held that under the milling contracts here involved, the mill owner was the producer of the sugar and based its decision on that conclusion. Again, this Court is not bound by such construction of the contract and we have complete freedom to challenge such construction.

We, therefore, submit that there has been no interpretation of this statute by the Supreme Court of the Philippines which prevents this Court from fully considering and deciding this case.

ADDITIONAL AUTHORITIES.

Petitioner Is a Manufacturer, Not a Merchant.

Century Dictionary, - sub Merchant;
Webster's Dictionary, - " "
Bouvier's Law Dictionary," "
Carr v. Riley, 198 Mass. 170;
Jewel v. Board of Trustees, 113 Ia. 147;
Union County Bank v. Ozan, 175 Fed. 710.

All Words of a Statute Must Be Given Some Meaning If Possible.

Ex Parte Public Bank, 278 U. S. 101.

CONCLUSION.

We think it clear that the following propositions have been established:

1. The tax does not apply to all manufacturers but only to those manufacturers who engage as merchants in the business of selling their own products.
2. If it be held that the tax under Section 1459 applies to all manufacturers, then the sales by petitioner of raw sugar upon which sales the taxes in controversy were collected, are expressly exempted from such tax by the provisions of Section 1460.

We respectfully submit that the judgment of the Supreme Court of the Philippine Islands should be reversed.

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